(16,656.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 155.

MAY HAYS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

Be it remembered that heretofore, to wit, on the 17th day of February, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at the city of Santa Fé, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

MAY HAYS
vs.
UNITED STATES OF AMERICA.

To the honorable chief justice and associate justices of said court:

May Hays, a resident of the county of San Miguel and a citizen of the United States of America and of the Territory of New Mexico, as complainant, brings this his petition against the United States of America, as defendant, and thereupon states and shows to this court the following:

I. That previous to the second day of July, A. D. 1842, Manuel Armijo, governor of the Territory of New Mexico under the Mexican government, in accordance with a petition granted to Venturo Trujillo a certain tract of land situated in the then "demarcation" of San Miguel del Bado, now the county of San Miguel, Territory of New Mexico, at the place known as "Apache Springs" (Ojo del Apacha), and issued a decree directing the constitutional alcalde to place said Venturo Trujillo in possession of the lands granted, which said decree he signed as governor of the Territory; and the constitutional alcalde, to whom was referred the matter of putting the petitioner in possession of the said lands, some time afterwards made his return that he had placed the petitioner, Venturo Trujillo, in possession of the said lands in obedience to said decree and order, and that the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico.

II. Your petitioner further shows that he has not in his possession or under his control either the original or a copy of said petition, order, and decree of the said governor and the return of said constitutional alcalde, and the same are not in the possession of the surveyor general of New Mexico; that the archives of New Mexico were kept previous to the occupation of the Territory by the United States and for some time thereafter very carelessly, and many of the papers and documents therein were lost and destroyed, the above among the number, and your petitioner prays that he may give secondary evidence of said petition, order, and decree of the said governor and the return of said constitutional alcalde.

III. That the petition of said Venturo Trujillo and the
3 grant, order, and decree by the governor of New Mexico can be proved by the testimony of Guadalupe Miranda, secretary of the Territory of New Mexico under the Mexican government from the ninth day of April, 1839, until the last day of October, 1843, during the time that Manuel Armijo was governor of the Territory of New Mexico under the Mexican government, and by the testimony of Rafael Aragon, who was secretary of Demasio Salazar, the constitutional alcalde who placed Venturo Trujillo in possession of the grant; that both said Guadalupe Miranda and Rafael Arafon are dead, and your petitioner begs leave to file herewith, marked "A," a copy of their testimony taken in case numbered 72, which is now on file in the office of the surveyor general of the Territory of New Mexico, and makes the same a part of this petition, and prays that the same may be used in the trial of this case.

IV. That on the second day of July, A. D. 1842, Demasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado (now embraced within the limits of the county of San Miguel, Territory of New Mexico), acting in conformity with the laws and customs of Mexico, placed Venturo Trujillo in possession of the lands at the place called Apache Springs (Ojito del Apache), situated in what is now the county of San Miguel, Territory of New Mexico, bounded and described as follows, to wit: "On the north the mesa, on the south the old road to Los Chupaines, on the east the Mesa de los Chupaines, and on the west the hills bordering on the Cañon Cito de la Lagunita." The original certificate of juridical possession made by the constitutional alcalde and which was given to said Venturo Trujillo is now on file in the office of the surveyor general of the Territory of New Mexico and is made a part of this petition, and a copy thereof and a translation into English, marked "B," is filed herewith and is made a part of this petition. A duplicate copy of said certificate was returned by the alcalde with the original granting decree and has been lost with it.

V. That said Venturo Trujillo entered into possession of said tract of land so granted, and occupied the same from about July, 1842, for about four years; that after him and claiming through him, his heirs and assigns, the property was occupied by Juan Lucero, Jesus Casados, John L. Taylor, and by your petitioner, May Hays, who, by virtue of sundry and divers mesne conveyances, now claims the ownership of the whole of said tract of land, and that ever since the year 1842 and at the present time the said grantee, Venturo Trujillo, and his legal representatives and those claiming under him and them have held, claimed, used and occupied, owned, and grazed upon peaceably and notoriously the whole of said land.

Copies of said mesne conveyances and translations of such as
4 are in Spanish, marked "C," are filed herewith and are made part of this petition.

VI. That a survey of said tract of land has never been made, but that the boundaries of said piece of land are well known and are established landmarks and are now claimed as the boundaries of said land. A sketch map of said tract of land, marked "D," is filed

herewith and is made a part of this petition. Your petitioner cannot state how much land is embraced within the limits of said grant, but his best information is that it does not exceed eleven leagues, and he therefore avers that it is not over eleven leagues.

VII. That in the year —— John L. Taylor, the then owner of said Apache Springs grant, made application to the surveyor general of the Territory of New Mexico for the approval of said grant of land, reported as No. 72, which application was rejected on December 19th, 1872, by the said surveyor general of the Territory of New Mexico on the ground that a justice of the peace had no authority under the laws of the Mexican government to make a grant of land; that on September 22nd, 1873, application was made to the surveyor general of the Territory of New Mexico to reopen the said application for confirmation, to receive new testimony which had been discovered in said cause. Said application is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "E," is filed herewith and is made a part of this petition; that the surveyor general allowed such new testimony to be introduced, as shown by Exhibit "F," hereto attached, which is a copy of the original now on file in the office of the surveyor general of the Territory of New Mexico, and which copy is made a part of this petition, and that the testimony so taken was that of Rafael Aragon, secretary of Damasio Salazar, constitutional alcalde, who placed Venturo Trujillo in possession of said land, and Guadalupe Miranda, secretary of New Mexico during the administration of Manuel Armijo, governor of New Mexico under the government of Mexico. The testimony of both was that the governor had made a valid grant and one good under the law, and that the constitutional alcalde had acted under it when he put said Ventura Trujillo in possession of the tract of land aforesaid. The original of this testimony is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "A," is filed herewith and is made a part of this petition.

VIII. That Rafael Aragon and Guadalupe Miranda are both dead, and your petitioner knows of no other person or persons by whom the facts sworn to by them can be proved, and he prays this court that he may introduce the evidence in this cause already sworn to by them, and a copy of which, marked "A," is hereto attached and made a part of this petition.

IX. That your petitioner knows of no one who makes adverse claim to your petitioner for said lands; that since July, A. D. 1842, the said grant has always been claimed, occupied, and held by the said Venturo Trujillo, his heirs, grantees, and assigns, and those claiming under them, as an individual grant made by the Government of Mexico, and has been so generally recognized.

X. That the original documents by the governor of New Mexico, creating the grant, are not now known to exist, and therefore no such documents are filed herewith. Your petitioner refers, however, to the papers now on file, in claim No. 72, in the office of the surveyor general of the Territory of New Mexico, and prays for per-

mission to use the same as if they or copies thereof had been filed with this petition.

XI. That there are no gold or silver mines or lodes or minerals within the limits of said grant to the knowledge of your petitioner, and he therefore alleges that there are none, but if any there are, petitioner alleges that the same pertain to him in full proprietorship by virtue of the said grant.

Your petitioner therefore claims, in consideration of the premises, that under and by virtue of the laws and customs in force in New Mexico, at the time of the acquisition of this Territory by the Government of the United States of America, he is entitled as the legal representative of the original grantee, Venturo Trujillo, to the land within the original boundaries as above set forth; and as the same has been held, possessed, and claimed by yout petitioner and his grantors, *and* he prays that the said grant may be enquired into and its validity established by decree of this honorable court, and that by said decree the same may be confirmed and set apart to your petitioner as the legal representative of the original grantee, and for such other and further relief as may seem meet and proper in the premises and as equity and justice may require.

May it please your honors to grant unto your petitioner the proper process to bring the said defendant, The United States of America, into court, in accordance with the law and practice of this honorable court.

5*a* And your petitioner, as in duty bound, will ever pray, etc.

CATRON & CROSS,
Att'ys for Claimant.
W. J. MILLS,
Att'y for Claimant.

THOMAS B. CATRON,
Of Santa Fé, and
WILLIAM J. MILLS,
Of Las Vegas, N. M.,
Solicitors for Petitioner.

6 And be it further remembered that thereafter, to wit, on the day and year last aforesaid, there was filed in the said office of said clerk a map; which said map is as follows, to wit:

(Here follows map, marked page 7.)

8 And be it further remembered that, to wit, on the 23d day of March, 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

9 *Summons.*

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

In the U. S. Court of Private Land Claims.

MAY HAYS, Plaintiff, *versus* THE UNITED STATES OF AMERICA, Defendant. } Petition Filed in the Clerk's Office this 17th Day of February, A. D. 1897.

The President of the United States of America to Matt. G. Reynolds, Esq., attorney for the United States, before the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 23d day of March, A. D. 1893, and of the Independence of the United States the 116th year.

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

9½ [Endorsed:] Oje del Apache grant. Gen. No., 101; F. No., 3. U. S. court of private land claims, district of New Mexico. May Hays, plaintiff, *versus* The United States of America, defendant. Summons. Filed this 21st day of April, A. D. 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

APRIL 1, A. D. 1893.

I hereby certify that I received the within writ on the — day of April, A. D. 1893, and that I have personally served the same upon the said defendant, U. S., by delivering to —— —— and each of

them personally a true copy of the within writ at the time and place as follows: As to —— ——, at ——, county of ——, on the — day of ——, A. D. 189–. As to —— ——.

Served on me this 29th day of March, 1893.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ, therefore, returned by me, as the law directs, this 21st day of April, A. D. 1893.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's Fees.

Service — defendants, at $2..... ..... $
Mileage — miles at 6c. going only... ....
1 summons..... 4.00

Total..... $

Paid by —— ——.

10 And be it further remembered that thereafter, to wit, on the 21st day of March, 1895, Plaintiff's Exhibit "C," chain of title, was filed in the office of the clerk; which said exhibit is in the words and figures following, to wit:

11 In the United States Court of Private Land Claims.

MAY HAYS
vs.
THE UNITED STATES. } No. 101. The Ojo del Apache Tract.

Chain of Title.

Bentura Trujillo, original grantee, July 2, 1842.

Juan Nepomuceno Lopez, attorney for widow and heirs of original grantee, to Juan Lucero. } September 21, 1855.

Conveys the whole tract.
Consideration not given.

Juan B. Lucero to John L. Taylor and Henry D. Gorham. } March 24, 1866.

Consideration, $300.00.
Conveys the whole tract.

Andrea Trujillo and Juan Catarino Romero, her husband; Francisco Trujillo and Jacinta Vigil, his wife; Maria Apolinaria Romero, Maria Serafina Garcia, wife of Donaciano Trujillo; Isidro Lopez and Tomaso Tabares, his wife; Juan Lopez and Gregaria Romero, his wife, and Donaciano Trujillo, husband of Serafina Garcia,
to
Louis Sulzbacher. } September 24, 1874.

Convey half their interest in the tract acquired by virtue of inheritance as the direct or indirect heirs of Bentura Trujillo, deceased, and Maria Getrudis Gonzales, deceased, wife of said Trujillo.
Consideration, $1.00 and professional services.

12 Lázaro Sandoval and Margarita Baca, his wife, and Guadalupe Trujillo and Francisco Lopez
to
Louis Sulzbacher. } November 2, 1874.

Convey all their interest in the tract acquired by virtue of inheritance as the direct or indirect heirs of the original grantee.
Consideration, $1.00 and professional services.

Juan Catarino Romero and Antonia Trujillo, his wife, and Francisco Trujillo and Jacinta Vigil, his wife,
to
Louis Sulzbacher. } November 3, 1874.

Convey all their interest in the tract acquired by inheritance, etc., as above.
Consideration, $400.00.

Donaciano Trujillo and Serafina Garcia, his wife, and Apolinaris Romero
to
Louis Sulzbacher. } November 3, 1874.

Convey all their interest in the tract acquired as above.
Consideration, $200.00.

Guadalupe Trujillo
to
Louis Sulzbacher. } November 6, 1874.

Conveys all his interest in the tract acquired by virtue of inheritance, etc.
Consideration, $200.00.

Lázaro Sandoval and Margarita Baca, his wife, to Louis Sulzbacher. } November 6, 1874.

Convey all their interest, etc.
Consideration, live stock and professional services.

13 Isidro Lopez and Tomasa Tabares, his wife, to José Lino Rivera. } November 24, 1874.

Convey one undivided ninth part of the tract, acquired as above.
Consideration, $10.00.

José L. Rivera and Rita Lopez de Rivera, his wife, to May Hays. } November 24, 1874.

Convey interest described in next preceding deed.
Consideration, $20.00.

John L. Taylor, adm'or of estate of Henry D. Gorham, to May Hays. } July 22, 1869. Sale by order of probate court.

Conveys one undivided half of the tract.
Consideration, $250.00.

Louis Sulzbacher and Pauline, his wife, to May Hays, } December 10, 1874.

Convey all their interest in the tract.
Consideration, $2,750.00.

John L. Taylor and Mary E., his wife, to May Hays. } April 23, 1877.

Convey all their interest in the tract.
Consideration, $5,000.00. This conveyance includes other property.

14 And be it further remembered that thereafter, to wit, on the 16th day of April, 1895, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

15 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, May Term, 1895.

MAY HAYS, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 101.

Answer.

Now comes The United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause says:

That for aught it knows to the contrary the matters and things in said petition alleged may be true, but having no knowledge or information sufficient to enable it to form a belief as to whether they are true and not confessing any of them to be true in the manner and form as the same are in said petition set forth and alleged, it asks that plaintiff be put to the proof of all the allegations therein contained, as provided he shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that he shall be put to the proof as to his pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

16 And be it further remembered that thereafter, to wit, on the 25th day of August, 1896, a motion to make parties defendant was filed in the office of the clerk; which said motion is in the words and figures following, to wit:

17 In the U. S. Court of Private Land Claims, Santa Fé, N. M., August Term, 1896.

MAY HAYS, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 101. Ojo del Apache G't.

AUGUST 25TH, 1896.

Now comes the defendant, The United States, in the above-entitled cause and moves the court for an order requiring the plaintiff in said cause to make parties defendant adverse possessors and claimants of real estate included within the grant claimed by said plaintiff in the above-entitled cause, said adverse possessors and claimants being the following:

Antonio Solano, Pablo Lucero, Antonio Lucero, Bonifacio Lucero, Francisco Lopez, Andres Lucero, Casimiro Trambley, Domingo

Hays, Hubert Hilgert, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adlon, William L. Adlon, William F. Prentiss, Thos. W. Haywood, Geo. Wilkinson, John L. Chapman.

All of said adverse possessors and claimants having made entries and acquired rights under the lands laws of the United States, as evidenced by the public record in the office of the register and receiver of the U. S. district land office at Santa Fé, N. M.

Defendant further prays an order of court requiring said plaintiff to serve each of said adverse claimants and possessors with citation and a copy of their petition, as required by law.

MATT. G. REYNOLDS, *U. S. Att'y.*

18 And afterwards, to wit, at a stated term of the court of private land claims begun and held at Santa Fé, on the 10th day of August and on the 16th day of said term, the same being the 27th day of August, 1896, the following, among other, proceedings were had, to wit:

MAY HAYS, Plaintiff,
vs.
UNITED STATES, Defendant. } No. 101.

This cause coming on to be heard, on the motion of the defendant for an order requiring the plaintiff in the above-entitled cause to make parties defendant adverse possessors and claimants of real estate included within the grant claimed by said plaintiffs in the above-entitled cause, said adverse possessors and claimants being the following: Antonio Solano, Pablo Lucero, Antonio Lucero, Bonifacio Lucero, Francisco Lopez, Andres Lucero, Casimiro Trambley, Domingo Hays, Herbert Hilgers, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adlon, William J. Adlon, William F. Prentis, Thos. W. Hayward, Geo. W. Wilkinson, John L. Chapman, and for a further order requiring that said adverse possessors or claimants be summoned and served, as provided by law, and

19 said motion having — argued and submitted and the court being sufficiently advised in the premises, it is ordered by the court that said plaintiff, May Hays, be, and he is hereby, ordered and required to amend his petition in said cause so as to particularly state the name or names of any persons in possession or claiming said grant or any part thereof otherwise than by lease or permission of the petitioners. It is further ordered by the court that said plaintiff serve all such adverse claimants and possessors above mentioned with a copy of his petition and with citations, as provided by law. It is further ordered by the court that the further hearing of this cause stand adjourned and continued until said plaintiffs shall have complied with the terms of the order.

20 And be it further remembered that thereafter, to wit, on the first day of September, 1896, an amended petition was filed in the office of the clerk; which said amended petition is in the words and figures following, to wit:

21 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

MAY HAYS
vs.
THE UNITED STATES OF AMERICA ET AL.

To the honorable chief justice and associate justices of said court:

May Hays, a resident of the county of San Miguel and a citizen of the United States of America and of the Territory of New Mexico, as complainant, brings this his petition against the United States of America and Antonio Salano, Pablo Lucero, Antonio Lucero, Bonafacio Lucero, Francisco Lopez, Andres Lucero, Casimero Trambley, Domingo Hays, Hubert Hilgers, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adalon, William L. Adlon, William F. Prentiss, Thos. W. Hayward, Geo. W. Wilkinson, and John L. Chapman, as defendants, and thereupon states and shows to this court the following:

I. That previous to the second day of July, A. D. 1842, Manuel Armijo, governor of the Territory of New Mexico, under the Mexican government, in accordance with a petition granted to Venturo Trujillo a certain tract of land situated in the then "demarcation" of San Miguel del Bada, now the county of San Miguel, Territory of New Mexico, at the place known as the "Apache Springs" (Ojo del Apache), and issued a decree directing the constitutional alcalde to place said Venturo Trujillo in possession of the lands granted, which said decree he signed as governor of the Territory; and the constitutional alcalde, to whom was referred the matter of putting the petitioner in possession of the said lands, some time afterwards made his return that he had placed the petitioner, Venturo Trujillo, in possession of the said lands in obedience to said decree and order, and that the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico.

II. Your petitioner further shows that he has not in possession or under his control either the original or a copy of said petition, order, and decree of the said governor and the return of the said constitutional alcalde, and the same are not in the possession of the surveyor general of New Mexico; that the archives of New Mexico were kept previous to the occupation of the Territory by the United States and for some time thereafter very carelessly, and many of the papers and documents therein were lost and destroyed, the above among the number; and your petitioner prays that he may give secondary evidence of said petition, order, and decree of the said governor and the return of said constitutional alcalde.

III. That the petition of said Venturo Trujillo and the grant, order, and decree by the governor of New Mexico can be proved by the testimony of Guadalpue Miranda, secretary of the Territory of New Mexico, under the Mexican government, from the ninth day of April, 1839, until the last day of October, 1843, during the time that Manuel Armijo was governor of the Territory of New Mexico

under the Mexican government, and by the testimony of Rafael Aragon, who was secretary of Damasio Salazar, the constitutional alcalde, who placed Venturo Trujillo in possession of the grant; that both said Guadalupe Miranda and Rafael Aragon are dead, and you- petitioner begs leave to file herewith, marked "A," a copy of the testimony taeken in case number 72, which is now on file in the office of the surveyor general of the Territory of New Mexico, and prays that the same may be used in the trial of this case.

IV. That on the second day of July, A. D. 1842, Damasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado (now embraced within the limits of the county of San Miguel, Territory of New Mexico), acting in conformity with the laws and customs of Mexico, placed Venturo Trujillo in possession of the lands of the place called Apache Springs (Ojo del Apache), situated in what is now the county of San Miguel, Territory of New Mexico, bounded and described as follows, to wit: On the north, the mesa; on the south, the old road to Los Chupaines; on the east, the Mesa de los Chupaines, and on the west, the hills bordering on the Cañoncito de la Laguuita. The original certificate of juridical possession made by the constitutional alcalde, and which was given to said Venturo Trujillo, is now on file in the office of the surveyor general of the Territory of New Mexico, and is made a part of this petition, and a copy thereof and translation into English, marked "B," is filed herewith and made a part of this petition. A
22 duplicate copy of the said certificate was returned by the alcalde with the original granting decree, and has been lost with it.

V. That said Venturo Trujillo entered into possession of said tract of land so granted and occupied the same from about July, 1842, for about four years; that after him and claiming through him, his heirs and assigns, the property was occupied by Juan Lucero, Jesus Casados, John L. Taylor, and your petitioner, May Hays, who, by virtue of sundry and divers *mense* conveyances, now claims the ownership of the whole of said tract of land, and that ever since the year 1842 and at the present time the said grantee, Venturo Trujillo, and his legal representatives and those claiming under him and them have held, claimed, used and occupied, owned and grazed upon, peac-ably and notoriously, the whole of said land. Copies of said *mense* conveyances and translations of such as are in Spanish, marked "C," are filed herewith and are made part of this petition.

That a survey of said tract of land has never been made, but that the boundaries of said piece of land are well known and are established landmarks, and are now claimed as the boundaries of said land. A sketch map of said tract of land, marked "D," is filed herewith and is made a part of this petition. Your petitioner cannot state how much land is embraced within the limits of said grant, but his information is that it does not exceed eleven leagues, and therefore avers that it is not eleven leagues.

VII. That in the year — John L. Taylor, the then owner of said Apache Springs grant, made application to the surveyor general of

the Territory of New Mexico for the approval of said grant of land, reported as No. 72, which application was rejected on December 19th, 1872, by the surveyor general of the Territory of New Mexico on the ground that a justice of the peace had not authority under the laws of the Mexican government to make a grant of land. A copy of said rejection, marked "E," is filed herewith and is made a part of this petition; that on September 22nd, 1873, application was made to the surveyor general of New Mexico to reopen the said application for confirmation to receive new testimony which had been discovered in said cause. Said application is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "E," is filed herewith and is made a part of this petition; that the surveyor general allowed such new testimony to be introduced, as shown by Exhibit "G," hereto attached, which is a copy of the original now on file in the office of the surveyor general of the Territory of New Mexico, and which copy is made a part of this petition; that the testimony as taken was that of Rafael Aragon, secretary of Demasio Salazar, constitutional alcalde, who placed Venturo Trujillo in possession of said land, and Guadalupe Miranda, secretary of New Mexico during the administration of Manuel Armijo, a governor of New Mexico under the government of Mexico. The testimony of both was that the governor had made a valid grant and one good under the law, and that the constitutional alcalde had acted under it when he put the said Venturo Trujillo in possession of the tract of land aforesaid. The original of this testimony is now on file in the office of the surveyor general of the Territory of New Mexico, and a copy thereof, marked "A," is filed herewith and is made a part of this petition.

VIII. That Rafael Aragon and Guadalupe Miranda are both dead, and your petitioner knows of no other person or persons by whom the facts sworn to by them can be proved, and he prays this court that he may introduce the evidence in this cause already sworn to by them, and a copy of which, marked "A," is hereto attached and made a part of this petition; and your petitioner is informed and believes that the said defendants, to wit, Antonio Salano, Pablo Lucero, Antonio Lucero, Bonafacio Lucero, Francisco Lopez, Andres Lucero, Casimero Trambley, Domingo Hays, Hubert Hilgers, Cruz Hays, John C. Adlon, Emma Adlon, Charles F. Adalon, William L. Adlon, William F. Prentiss, Thomas W. Hayword, George W. Wilkinson, and John L. Chapman, make some pretended claim of title in and to certain pieces and parcels of land within the said grant of land so owned, as aforesaid, by your petitioners and within the boundaries thereof, adverse and hostile *of* your petitioner therein, under certain alleged entries and patents issued by virtue of the laws of the United States, and your petitioner prays that the said parties may be made parties defendant to this petition, in accordance with the statute and the practice of this court, and that their right and title, if any there be, to such lands within the aforesaid grant of your petitioner be adjudicated and determined by this court, together with the value of said
23 lands so held by said defendants adversely to your petitioner, and that if the titles of the said defendants hereinbefore men-

tioned be sustained and held valid by this court, and thereupon excepted from any decree of confirmation which may be rendered in favor of your petitioner to the lands of said grant, there be adjudged and awarded to your petitioner the reasonable and fair amount and value of the said lands so excepted and withheld from your petitioner, and that judgment therefor in favor of your petitioner be rendered as against the defendant, The United States, together with his costs in this behalf, in accordance with the provision of the statute in such case.

That your petitioner knows of no one else who makes adverse claim to your petitioner for the said land; that since July, A. D. 1842, the said grant has always been claimed, occupied, and held by the said Venturo Trujillo, his heirs, grantees, and assigns, and those claiming under them, as an individual grant by the government of Mexico, and has been generally recognized.

X. That the original documents by the governor of New Mexico creating the grant are not now known to exist, and therefore no such documents are filed herewith. Your petitioner refers, however, to the papers now on file in claim No. 72, in the office of the surveyor general of the Territory of New Mexico, and prays for permission to use the same as if they or copies thereof had been filed with this petition.

XI. That there are no gold or silver mines or lodes or minerals within the limits of said grant to the knowledge of your petitioner, and he therefore alleges that there are none, and if there are plaintiff alleges that the same pertain to him in full proprietorship by virtue of the said grant.

Your petitioner therefore claims, in consideration of the premises, that under and by virtue of the laws and customs in force in New Mexico at the time of the acquisition of this territory by the Government of the United States of America he is entitled, as the legal representative of the original grantee, Venturo Trujillo, to the land within the original boundaries as above set forth and as the same has been held, possessed, and claimed by your petitioner and his grantees, and he prays that the said grant may be enquired into and its validity established by decree of this honorable court, and that by said decree the same may be conferred and set apart to your petitioner as the legal representative of the original grantee, and for such other and further relief as may seem meet and proper in the premises and as equity and justice may require.

May it please your honors to grant unto your petitioner the proper process to bring the said defendants, The United States and the above-named defendants, into court in accordance with the law and practice of this honorable court.

And your petitioner, as in duty bound, will ever pray, etc.

CATRON, SPIESS & GORTNER,
Santa Fé, New Mexico,
W. J. MILLS, *New Haven, Conn.,*
Sol'rs for Petitioner.

24 And be it further remembered that on the first day of September, 1896, three summons- were issued by the clerk of said court; which said summons-, with all endorsements thereon, are as follows, to wit:

25 TERRITORY OF NEW MEXICO, }
County of San Miguel. }

Montgomery Bell, first being duly sworn, upon oath says that he is a qualified elector of the Territory of New Mexico; that he served the within citation and summons on Antonio Solano on September 26th, 1896, at Dry Springs, near Apache Springs; on Pablo Lucero, on said date, at Lagunita; on Antonio Lucero on September 25th, 1896, at Las Vegas; on Bonificio Lucero, on said date, at said last-mentioned place; on Francisco Lopes, on said last-mentioned date, at Chupuderas; on Andres Lucer-, at said time and place; on Casimiro Trambley, on said day, at Rivera station; on Domingo Hays, on said date, at Apache Springs; on Cruz Hays, on said date, at said Apache Springs; on John C. Adlon on September 24th, at Las Vegas; on William L. Adlon, also at said date and place; on William T. Prentiss, by delivering the same to his agent, L. C. Fortu, as Las Vegas, on September 24th, 1896, who accepted service on behalf of said Prentiss; on Thos. W. Hayward on September 24th, at Las Vegas; on John L. Chapman, on said date at said place; on Emma Adlon, on said date at said place, and on Charles F. Adlon, on said date at said place, all being in the county of San Miguel, Territory of New Mexico; that he made said service on all except said Prentiss, by delivering to them, and each of them, a true copy of said summons, together with a true copy of the amended petition filed in said cause, attached thereto.

Affiant further on oath says that he made diligent search for George W. Wilkinson, but was unable to find him or any one who has succeeded to his rights in the premises; that it is understood he has gone to California and has abandoned his said claim.

MONTGOMERY BELL.

Subscribed and sworn to before me this 9th day of November, 1896.

MAX NORDHAUS,
Notary Public.

[SEAL.]

26 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of New Mexico,* } *ss:*

MAY HAYS, Plaintiff, *versus* UNITED STATES ET AL., Defendant-. } Amended Petition. Filed in the Clerk's Office this 1st Day of September, A. D. 1896.

The President of the United States of America to Antonio Solano, Pablo Lucero, Antonio Lucero, Bonifacio Lucero, Francisco Lopez, Andres Lucero, Casimiro Trambley, Domingo Hays, Cruz Hays, John C. Adlon, William L. Adlon, William T. Prentiss, Thomas W. Hayward, John R. Chapman, Emma Adlon, Charles F. Adlon and Geo. W. Wilkinson, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendants, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur or answer to the petition filed in said action, in said court, within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 1st day of September, A. D. 1896 and of the Independence of the United States the — year.

(Signed) JAMES H REEDER, *Clerk,*
[SEAL.] By IRENEO L. CHAVES,
Deputy Clerk.

[Endorsed:] Gen. No., 101–24. U. S. court of private land claims district of New Mexico. May Hays, plaintiff, *versus* United States *et al.*, defendant-. Summons and proof of service. Filed this 12th day of Nov. *12*, A. D. 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney- for plaintiff.

27 TERRITORY OF NEW MEXICO, *County of San Miguel.* }

M. Brunswick, being first duly sworn, on oath says that he is a qualified elector of the Territory of New Mexico; that he served

the citation of this court directed to Robert Hilgers, being the citation hereto attached, together with a copy of the amended petition of May Hays in this cause, upon Elizabeth Cockran, who has acquired the title and claim of Robert Hilgers in the premises by purchase, by delivering to said Elizabeth Cockran a true copy of said citation and amended petition at the county of San Miguel aforesaid, on September 26th; 1896.

M. BRUNSWICK.

Subscribed and sworn to before me this 9th day of November, 1896.

[Seal Max Nordhaus, Notary Public, San Miguel Co., Ter. of New Mex.]

MAX NORDHAUS,
Notary Public.

28 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, *District of New Mexico,* } ss:

MAY HAYS, Plaintiff, *versus* UNITED STATES ET AL., Defendant. } Amended Petition. Filed in the Clerk's Office this 1st Day of Sept., A. D. 1896.

The President of the United States of America to Elizabeth Cockran, grantee of Robert Hilgers, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do, the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 1st day of Sept., A. D. 1896, and of the Independence of the United States the — year.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

[Endorsed:] Gen. No., 101–24. U. S. court of private land claims, district of New Mexico. May Hays, plaintiff, *versus* United States *et al.*, defendant-. Summons and proof of service. Filed this 12th day of Nov., A. D. 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney- for plaintiff.

29 TERRITORY OF NEW MEXICO, } *County of San Miguel.* }

M. Brunswick, being first duly sworn, on oath say that he is a qualified elector of the Territory of New Mexico; that he served the citation of this court, directed to Robert Hilgers, being the citation hereto attached, together with a copy of the amended petition of May Hays in this cause, upon Elizabeth Cockran, who has acquired the title and claim of Robert Hilgers in the premises by purchase, by delivering to said Elizabeth Cockran a true copy of said citation and amended petition, at the county of San Miguel aforesaid, on September 26th, 1896.

M. BRUNSWICK.

Subscribed and sworn to before me this 9th day of November, 1896.

MAX NORDHAUS,
[SEAL.] *Notary Public.*

30 Form No. 167.

U. S. Court of Private Land Claims.

Summons.

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, } *ss:*
District of New Mexico, }

MAY HAYS, Plaintiff, *versus* UNITED STATES ET AL., Defendant. } Amended Petition. Filed in the Clerk's Office this 1st Day of Sept., A. D. 1896.

The President of the United States of America to Elizabeth Cockran, grantee of Robert Hilgers, Greeting:

You and each of you are hereby notified that an action has been brought in said court by May Hays, plaintiff, against you, as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 1st day of Sept., A. D. 1896, and of the Independence of the United States the — year.

(S'g'd) JAMES H. REEDER, *Clerk*,
[SEAL.] By IRENEO L. CHAVES,
Deputy Clerk.

[Endorsed:] Gen. No., 101–24. U. S. court of private land claims, district of New Mexico. May Hays, plaintiff, *versus* United States *et al.*, defendant. Summons and proof of summons. Filed this 12th day of Nov., A. D. 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. —— ——, of attorney- for plaintiff.

31 And be it further remembered that thereafter, to wit, on the 24th day of October, 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

32 UNITED STATES OF AMERICA:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

MAY HAYS
vs.
THE UNITED STATES OF AMERICA.

The answer of Emma Adlon, William M. Adlon, Chas. F. Adlon, John C. Adlon, Antonio Solano, and Eliza Bucci (formerly Mrs. Eliza Hilgers), sole heir- of Herbert Hilgers, defendants, to the bill of complaint of May Hays, complainant.

To the honorable chief justice and associated justices of said court:

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as these defendants are advised it is or are material or necessary for them to make answer unto, answering, say:

These defendants deny that previous to the second day of July, A. D. 1842, Manuel Armijo, governor of the Territory of New Mexico under the Mexican government, in accordance with a petition granted to Venturo Trujilla a certain tract of land situated in the then "demarcation" of San Miguel del Bado, now the county of San Miguel, Territory of New Mexico, at the place known as the "Apache Springs" (Ojo del Apache), nor issued a decree directing the constitutional alcalde to place said Venturo Trujilla in possession of the land granted, nor that to the constitutional alcalde was referred the matter of putting the petitioner in possession of said land, nor that some time afterwards said alcalde made his re-

turn that he had placed the petitioner, Venturo Trujilla, in possession of said land in obedience to said decree and order, nor that the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico.

II. These defendants admit that complainant has not in his possession or under his control either the original or a copy of said petition, order, and decree of the said governor and the return of said constitutional alcalde, and that the same are not in the possession of the surveyor general of New Mexico.

These defendants deny that the archives of New Mexico were kept previous to the occupation of the Territory by the United States and for some time thereafter very carelessly, and that many of the papers and documents therein were lost and destroyed, the above among the number, and the defendants pray that complainant be not permitted to give secondary evidence of said alleged petition, order, and decree of the said governor and the return of the said constitutional alcalde.

III. These defendants deny that the petition of the said Venturo Trujilla and the pretended grant, order, and decree by the governor of New Mexico can be proven by the testimony of Guadalupe Maranda, secretary of the Territory of New Mexico under the Mexican government from the 9th day of April, 1839, until the last day of October, 1843, during the time that Manuel Armijo was governor of the Territory of New Mexico under the Mexican government, nor by the testimony of Rafael Aragon, who was secretary of Demasio
33 Salazar, the constitutional alcalde who was alleged to have placed Venturo Trujillo in possession of the said pretended grant, and the defendants pray that the alleged testimony may not be used in the trial of this cause.

IV. They deny that on the second day of July, A. D. 1842, Damasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado (now embraced within the limits of the county of San Miguel, Territory of New Mexico), acting in conformity with the laws and customs of Mexico, placed Ventura Trujilla in possession of the lands of the place called Apache Springs (Ojo del Apache), situated in what is now called the county of San Miguel, Territory of New Mexico, bounded and described as follows, to wit: On the north the mesa; on the south the old road to Los Chupaines; on the east the Mesa de los Chupaines, and on the west the hills bordering on the Cañon Cito de la Lagunita.

These defendants neither deny nor admit that a certificate purporting to be a certificate of judicial possession, made by the constitutional alcalde, is now on file in the office of the surveyor general of the Territory of New Mexico, but deny that the original certificate of judicial possession made by the constitutional alcalde was given to said Ventura Trujillo, nor that a duplicate copy of said alleged certificate was returned by the alcalde with the pretended granting decree and has been lost with it.

V. These defendants deny that said Ventura Trujillo entered into possession of said land so alleged to have been granted and occupied the same from about July, 1842, for about four years. They

further deny that after him and claiming through him, his heirs and assigns, the property was occupied by Juan Lucero, Jesus Casados, John L. Taylor, and petitioner, May Hays, who by virtue of sundry and divers mesne conveyances now claims the ownership of the whole of said tract of land. They further deny that ever since the year of 1842 and at the present time the said grantee, Ventura Trujillo, and his legal representatives and those claiming under him and them have held, claimed, sued and occupied, owned and grazed upon peaceably and notoriously the whole of the said land.

VI. These defendants admit that a survey of said tract of land, has never been made, but they deny that the boundaries of said piece of land are well known and are established landmarks and are now claimed as the boundaries of said land. These defendants cannot state how much land is embraced within the limits of said grant, but from their information believe that there is more than eleven leagues within the boundaries above mentioned.

VII. These defendants admit that in the year of "—" John L. Taylor, the then pretended owner of said Apache Springs, made application to the surveyor general of the Territory of New Mexico for the approval of said pretended grant of land, reported as No. 72, which application was rejected on Dec. 19th, 1872, by the said surveyor general of the Territory of New Mexico, but they do not know if such rejection was upon the sole ground that the justice of the peace had not authority under the laws of the Mexican government to make a grant of land, and desire proof that such was the case.

34 These defendants neither deny nor admit that on September 22nd, 1873, application was made to the surveyor general of New Mexico to reopen the said application for confirmation to receive new testimony which had been discovered in said cause, and that said application is now on file in the office of the surveyor general of the Territory of New Mexico; that the surveyor general allowed such new testimony to be introduced; that the testimony as taken was that of Rafael Aragon, secretary of Demasio Salazar, constitutional alcalde, and Guadalupe Muranda, secretary of New Mexico during the administration of Manuel Armijo, governor of New Mexico under the government of Mexico, but these defendants desire proof that such was the case.

VIII. And these defendants, further answering, show that they are the patentees of certain portions of the said alleged grant, and hold patents from the Government of the United States to the respective lands described as follows, to wit:

The said Emma Adlon holding patent issued September 2nd, 1892, for the east half of the northwest quarter and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section twenty-nine, in township thirteen north, of range seventeen east, of the New Mexico meridian, in New Mexico Territory, containing one hundred and sixty acres.

The said William L. Adlon for the east half of the northeast quarter and the east half of the southeast quarter of section thirty, in township thirteen north, of range seventeen east, of the New Mexico meridian, containing one hundred and sixty acres.

The said Charles F. Adlon for the west half of the northwest quarter and the west half of the southwest quarter of section twenty-nine, in township thirteen north, of range seventeen east, of New Mexico meridian, containing one hundred and sixty acres.

The said John C. Adlon for the north half of the northeast quarter and the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of section twenty-nine, in township thirteen north, of range seventeen east, of the New Mexico meridian, containing one hundred and sixty acres.

The said Antonio Solano for the west half of the northeast quarter and the west half of the southeast quarter of section twelve, in township thirteen north, of range sixteen east, of the New Mexico meridian, containing one hundred and sixty acres.

The said Mrs. Eliza Bucci, formerly Eliza Hilgers, sole heir of Herbert Hilgers, deceased, for the southwest quarter of the northeast quarter and the west half of the southeast quarter and the northwest quarter of the northeast quarter of section thirty, in township thirteen north, of range seventeen east, of New Mexico meridian, containing one hundred and sixty acres.

All of the foregoing-described lands lie within the boundaries of the alleged grant set forth in said petition.

These defendants further show that they settled upon, improved, and acquired title to their respective lands under the laws of the Government of the United States without notice either of record or otherwise of said pretended grant set forth in said petition, nor were they interfered with nor their action in obtaining such
35 & 36 title to said land opposed in any manner or protested against by said petitioner, notwithstanding the possession of these various defendants of their respective lands and all other actions by them taken in acquiring title to said lands were open and notorious, and said petitioner permitted these defendants to acquire title to their respective lands without such notice as the said petitioner was in *conscious* bound to give and by law should give these defendants of any adverse claim in said land by him by virtue of said alleged grant.

These defendants show that since making entry on said respective lands under the laws of the Government of the United States many years ago that they or their grantees have been in open and notorious possession of said various land- up to the present date.

And by virtue of said various proceedings and said patent these defendants allege that they have obtained a good and valid title to their respective lands, and pray that this court may so find.

These defendants, further answering, deny that the petitioner is entitled to the relief or any part thereof in the said petition demanded as to their respective lands, and pray the same advantage of this answer as if they had pleaded or demurred to the said petition, and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. G. KOOGLER,
Attorney for Defendant.

37 And be it further remembered that thereafter, to wit, on the 12th day of November, 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

38 UNITED STATES OF AMERICA, *ss*:

In the Court of Private Land Claims, Santa Fé District.

MAY HAYS, Plaintiff,
vs.
THE UNITED STATES, Defendant. } No. 101. Ojo del Apache Grant.

Answer.

Now comes the defendant in the above-entitled cause and for answer to the plaintiff's petition shows to the court as follows:

I.

It denies that previous to the second day of July, A. D. 1842, or on any other day, Manuel Armijo, governor of the Territory of New Mexico, granted a petition of Venturo Trujillo for a tract of land known as the Apache Springs, described in plaintiff's petition.

II.

It denies that said Armijo, governor as aforesaid, issued a decree directing the constitutional alcalde to place said Trujillo in possession of the lands so alleged to have been granted, or that said Armijo, governor as aforesaid, signed or entered such a decree.

III.

It denies that said alleged grant was made to said Trujillo by competent authority, but alleges that if any concession was made
39 at all, it was by Demasio Salazar, alcalde, and that said Salazar as alcalde had no authority under the laws then in existence or under any special order directing him so to do, issued by competent authority, to make said grant.

IV.

Defendant further denies that said Trujillo was placed in possession of said lands, but alleges that if he entered upon and took possession thereof he retained possession of the same only for a few days, and thereupon abandoned the same, and that he thereby forfeited and lost all rights in and to said land, even if, as defendant denies, he ever acquired any such rights.

V.

As to all of the other allegations of plaintiff's petition, defendant alleges that it has no information enabling it to form an opinion as to the truth or falsity thereof, and it accordingly denies each and

all of said allegations, and prays that the plaintiff be put to strict proof thereof.

Now, having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
United States Attorney.

40 And afterwards, to wit, at a stated term of the court of private land claims begun and held at Santa Fé on the 9th day of November and on the 5th day of said term, the same being the 13th day of November, 1896, the following, among other, proceedings were had, to wit:

MAY HAYS
vs.
UNITED STATES. } No. 101. Ojo del Apache Grant.

The above-entitled cause now coming on to be heard, there appeared T. B. Catron, Esq., for the plaintiffs and W. H. Pope, Esq., appearing for the said defendant, The United States. The said parties announcing themselves ready, the trial of the cause was proceeded with on the pleadings presented. Oral and documentary proof was introduced. The arguments were postponed until Monday, the 16th inst.

41 And afterwards, to wit, on the 7th day of said term, the same being November 16th, 1896, the following, among other, proceedings were had, to wit:

MAY HAYS
vs.
UNITED STATES. } No. 101.

The above-entitled cause now coming on to be further heard, all the attorneys in the cause being present, after hearing the argument of the counsel, the same was taken under advisement by the court.

42 On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

43 In the Court of Private Land Claims, Santa Fé, New Mexico, August Term, 1896.

MAY HAYS
vs.
UNITED STATES. } No. 101. Ojo del Apache Grant.

On November 13th, 1896, the above-named cause was called up for trial, and the following proceedings were had therein in open court:

Appearances: Messrs. Catron, Spiess & Gortner, for the plaintiff; Wm. H. Pope, Esq., assistant U. S. attorney, for the Government.

Mr. CATRON: We introduce in evidence a paper which is the act of juridical possession from file 148, reported number 72. (Marked Plaintiff's Exhibit "A.")

Mr. POPE: I admit it was filed in reported number 72. We object to its introduction, first, on the ground that its genuineness has not been established and its custody has not been proven; and, second, it is irrelevant and constitutes no basis of title, and it is not proper to be considered in this case.

Mr. CATRON: We also introduce in evidence the evidence which was taken before one of your honors in this building on August 22nd, 1896, of Pascual Baca, Encarnacio Lopez, Jose Benito Martinez, Francisco Trujillo, and May Hays. Marked Plaintiff's Exhibit "B."

Mr. POPE: In addition to the objection we made at the time of the taking of this evidence, we desire to make the further objection now to the introduction of any evidence tending to show any order made by Governor Armijo or to any report made by Damasio Salazar, or the contents of any written instrument of Governor Armijo affecting this title, on the ground that it is secondary evidence, and on the further ground that it is otherwise incompetent.

Mr. CATRON: We also introduce in evidence the testimony
44 of Rafael Aragon taken before the surveyor in 1872. (Marked Plaintiff's Exhibit "C.")

Mr. POPE: We make the same objection to all this testimony that we made to the last tendered and on the ground that no proper foundation has been laid for secondary evidence.

E. F. SIDEBOTTOM, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified, upon direct examination by Mr. Catron, as follows:

Q. What is your official position, if any?

A. I am clerk and custodian of the archives in the surveyor general's office of New Mexico.

Q. Have you in your possession the papers in the Ojo del Apache grant—the May Hays claim—reported number 72, file 148, known as the John L. Taylor grant?

A. Yes, sir.

Q. State whether or not there is amongst those papers any original grant paper made by Governor Armijo to Ventura Trujillo.

A. Well, from my knowledge I cannot say; what I know about it is the papers are filed and docketed belonging to the surveyor general's office, and among these files are some Spanish documents.

Q. Is there any other Spanish document than Exhibit "A"?

A. Well, there has been filed two Spanish papers, "A" and "B," according to the docket here.

Q. There are only two, is there?

A. Only two as shown, so far as I know. Yes, sir; these two documents are the only Spanish documents called by *by* the docket.

Q. Then you know of no other papers in the surveyor general's office in reference to this grant in the Spanish language?

A. I do not.

Q. Have you examine all the papers? Were there any other papers, can you state from your knowledge?

A. So far as my knowledge extends, these are the only ones.

Q. If there are any other papers there you do not know it?

A. If there are any others I do not know it; I never made a search.

Q. Will you make a search and see if there is any other papers there with reference to it?

A. Yes, sir.

45 Cross-examination by Mr. POPE:

Q. You never examined them with a view of knowing whether there are any other papers?

A. No, sir.

Q. All the papers filed in the case are marked there?

A. All the papers that are filed in the case are marked on the docket here.

Mr. CATRON:

Q. It is the custom to file the papers in the case to which they belong—in the files of each case?

A. Well, as to that, there has been no new cases since I have had charge of the office, so far as I know. I suppose it is the custom of the office. I understand it was the custom of the office to file all the papers with the reported number of the case relating to any particular grant.

Q. That is, any particular papers are filed with that case belonging to it?

A. Yes, sir.

Q. I wish you would make a search of all the papers so you can testify whether there are any more papers or not in this case.

A. Yes, sir; I will.

The COURT: Take a recess now until two o'clock today.

The COURT: Take a recess now until two o'clock.

The hour of two o'clock having arrived, the further hearing of the above-named cause was resumed.

Mr. CATRON:

Q. Mr. Sidebottom, have you since the court adjourned made any investigation or search for other papers which you have been asked about?

A. I have not had time since adjournment to make any search.

Q. How long will it take you to ascertain that fact?

A. Well, there are something like 1,400 papers to look over.

Q. You looked at the place where these papers ought to be?

A. The Spanish papers in that case?

Q. I stated that I wanted you to look and see if you had in your possession a grant made by Governor Armijo in the year 1842 to

Ventura Trujillo, signed by Governor Armijo and Guadalupe Miranda, as secretary of the Territory, for the Ojo del Apache Springs property. I will ask for a *duces tecum* to the surveyor general.

A. I will state as my opinion that I do not suppose there is any.

Q. I think you do not want to look.

A. No; I am perfectly willing to look, so far as that is concerned.

45*a* The COURT: Mr. Catron, so far as we are concerned, we think you have shown that the paper in question is not in the files of this case. We understand it has been the duty of the surveyor general for the last forty years to get these papers together. We understand that you seek to prove the absence, loss, or destruction of the original grant made by the governor. We think you have laid a foundation for secondary evidence.

Mr. CATRON: Mr. Pope, do you admit that?

Mr. POPE: I have information to admit it at this time; I may before we conclude the case.

Cross-examination by Mr. POPE:

Q. You know of your own knowledge that the uniform practice of the surveyor general's office has been to transfer to the files of each case any papers in that office pertaining to the case, do you?

A. No, sir; I do not know that.

Q. Has it been the practice since you have been in the office?

A. No transferring done since I have been in the office. I know of no archives that have been transferred to the cases since I have been in the office.

Q. There are large numbers of papers—archives—transferred to the cases, have they not?

A. Well, I do not know as to that.

Q. You know there are archives relating to the cases, do you not—cases that have been before the surveyor general and that have not been transferred to the reported cases?

A. No, sir; I cannot say as to that.

Q. You say there are 1,400 archives?

A. I believe 1,384 or 1,385.

Q. They relate to the land cases?

A. To land cases, transfers, and so on.

Q. Quite a number of grant papers among those archives?

A. Quite a number relating to lands; whether specially to grants or not is more than I can say; I am not a Spanish scholar and not competent to judge as to that.

Q. As a general rule, it is understood that the papers belonging to each case are put in a package to be kept separately?

A. Yes, sir.

Q. And that is the purpose of the office in keeping them together?

A. Yes, sir.

Q. In this case you did not find any such grant papers as you have been asked about?

A. No.

Q. You have looked amongst those papers, have you not?
A. Yes, sir.
46 Q. It is not there?
A. Not there that I know of.

Mr. CATRON: I now offer in evidence the testimony of Juan Bautista Lucero, taken on the preliminary examination in this case. (Marked Plaintiff's Exhibit "C.") I will read it to the court.

Also the testimony of Guadalupe Miranda, taken before the surveyor general in 1873. (Marked Plaintiff's Exhibit "C.") I will read it to the court.

Mr. POPE: We admit that he is dead, but I desire to interpose an objection based on the files of the surveyor general's office showing that this testimony had been closed and the case transmitted to Congress for consideration, and that this testimony was subsequently taken and the case reopened, under the statement of the surveyor general that he doubted his authority to do so, he having already transmitted to Congress the report—to the land office his report; and I desire to object to it on the further ground that this testimony is practically an affidavit, as the court will notice on its reading, and the further objection that it was not lawfully taken and received by the surveyor general, not having been taken before him, but having been taken under a commission that he issued to a deputy clerk of some county, and the further objection to it is that no proper foundation has been laid for secondary evidence.

Mr. CATRON: The next paper which we introduce in evidence is a deed dated September 21, 1855, from Juan Nepomuceno Lopez to Juan Lucero. (Marked Plaintiff's Exhibit —.)

The next document we offer in evidence is a deed from Juna B. Lucero to John L. Taylor, dated March 24, 1866. (Marked Plaintiff's Exhibit —.)

The next document we offer in evidence is a deed from Andrea Trujillo and Juan Catarino Romero, her husband; Francisco Trujillo and Jacinta Vigil, his wife; Maria Apolinaria Romero, Maria Sefarina Garcia, wife of Donacio Trujillo; Isidro Lopez and Tomasa Tabares, his wife; Juan Lopez and Gregorai Romero, his wife, and Donaciano Trujillo, husband of Serafina Garcia, to Louis Sulzbacher, dated September 24, 1874.

The next document we offer in evidence is a deed from Lazaro Sandoval and Margarita Baca, his wife, and Guadalupe Trujillo and Francisca Lopez to Louis Sulzbacher, dated November 2, 1874.
47 This is a certified copy of that deed. (Marked Plaintiff's Exhibit 4.)

The next document we offer in evidence is a deed from Juan Catarino Romero and Antonia Trujillo, his wife, and Francisco Trujillo and Jacinta Vigil, his wife, to Louis Sulzbacher, dated November 3, 1874. (Marked Plaintiff's Exhibit 5.)

The next document we offer in evidence is a deed from Donaciano Trujillo and Serafina Garcia, his wife, and Apolinaria Romero to Louis Sulzbacher, dated November 3, 1874. (Marked Plaintiff's Exhibit 6.)

The next document we offer in evidence is a deed from Guadalupe Trujillo to Louis Sulzbacher, dated November 6, 1874. (Marked Plaintiff's Exhibit 7.)

The next document we offer in evidence is a deed from Lazaro Sandoval and Margarita Baca, his wife, to Louis Sulzbacher, dated November 6, 1874. (Marked Plaintiff's Exhibit 8.)

The next document we offer in evidence is a deed from Isidro Lopez and Tomasa Tabares, his wife, to Jose Lino Rivera, dated November 24, 1874. (Marked Plaintiff's Exhibit 9.)

The next document we offer in evidence is a deed from Jose L. Rivera and Rita Lopez de Rivera, his wife, to May Hays, dated November 24, 1874. (Marked Plaintiff's Exhibit 10.)

The next document we offer in evidence is a deed from John L. Taylor, administrator of the estate of Henry D. Gorman, to May Hays, dated July 22, 1869. (Marked Plaintiff's Exhibit 11.)

The next document we offer in evidence is a deed from Louis Sulzbacher and Pauline, his wife, to May Hays, dated December 10, 1874. (Marked Plaintiff's Exhibit 12.)

The next document we offer in evidence is a deed from John L. Taylor and Mary E., his wife, to May Hays, dated April 23, 1877. (Marked Plaintiff's Exhibit 13.)

Mr. POPE: We desire to enter an objection to each and all of these papers on the ground that no proper foundation has been laid and their genuineness has not been established.

Mr. CATRON: Mr. Hays' house was burned down by fire in San Miguel county, and these deeds were destroyed, and I will have to furnish certified copies. That is all the evidence I desire to
48 introduce except the evidence of the justice of the peace of San Miguel del Bado, which I reserve the right to do.

PABLO LUCERO, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Pablo Lucero.
Q. Where do you live?
A. I live at Chupaderos.
Q. What is your age?
A. I am 63 years old.
Q. How long have you lived at Chupaderos?
A. I have lived there since the year forty.
Q. Do you know a place called the Apache spring?
A. Yes.
Q. How far is that from Chupaderos?
A. About four miles.
Q. How long have you known the Apache spring?
A. I know it since the year forty.
Q. Just state how you have known it—whether or not you were ever at the spring and how many times and all about it.
A. The first time I went there I was passing by; then I went to

the spring to take possession of it, being asked to do so by a man, the late Rafael Salazar.

Q. Between the time you first knew the spring and the time you took possession there were you acquainted with the spring; did you go there at any time?

A. I was not there, except in passing by the spring, before I took possession.

Q. Did you pass by the spring once or more than once or how many times?

A. I remember one or two times before that time.

Q. At that time did you have occasion to herd flocks out there or anything of that character?

Mr. CATRON: We object, as it is suggesting to him what he did.

The COURT: He may ask him if he ever herded out there.

Q. Did you ever herd in the neighborhood of the Apache spring; and, if so, when?

Mr. CATRON: Object to that.

A. No.

Q. I believe you said you were living in Chupaderos in forty?

A. Yes.

49 Q. Did you know Ventura Trujillo?

A. No.

Q. What was the condition of the spring as to your knowledge from the year forty up to the time you took possession; was there any house there?

A. There was no house there.

Q. Was there any land cultivated or broken?

A. No.

Q. Was there any one during that time living at the spring?

A. No.

Q. Have you ever heard of Ventura Trujillo?

A. Yes.

Q. When did you first hear of Ventura Trujillo?

A. About the year fifty-five, when I went to the place to take possession.

Q. Was Ventura Trujillo living there then?

A. No.

Q. Do you know where Ventura Trujillo lived previous to that time?

A. Yes.

Q. Where did he live?

A. In San Miguel.

Q. Did he ever live at the Apache spring?

A. No.

Q. Did you ever see Ventura Trujillo?

A. No; I did not know him.

Q. I believe you said you took possession in 1855?

A. Yes.

Q. Just state how you came to take possession and who were your associates.

A. I went to the Ojo del Apache spring in company with Don Rafael Salazar and other people. I remember only a part of the names of the other people; one of them was Jose Maria Martinez and myself, and Rafael Salazar and Jose Martinez, also Jose Abad and Gabriel Valencia.

Q. Were there any improvements of any character at the spring, any houses, or anything of that kind?

A. No.

Q. Were there any ruins of houses or anything of that character left by people living there?

A. No.

Q. Have you ever seen anything of that kind in passing the spring previous to that time?

A. No.

Q. Now, this property when you and the others settled on it, how was it recognized as to belonging to any one?

Mr. CATRON: We object, as no proper foundation has been laid for this evidence.

A. It was known as public land.

Q. Had you ever heard that Ventura Trujillo had any interest there?

Mr. CATRON: We object, as it is impertinent, irrelevant, improper, and no proper foundation laid for it.

50 A. I did not know it before the time that we went to the place.

Q. Was Juan Bautista Lucero one of those who was with you in that enterprise?

A. No.

Q. Did Juan Lucero live at this spring at any time?

Mr. CATRON: Object, as no proper foundation has been laid for it.

A. No.

Q. What improvement did you make at that spring when you went there with the others?

Mr. CATRON: Object, as no proper foundation has been laid for it.

The COURT: Ask the question.

A. We threw—made a—dug the earth for a reservoir, and we made a little ditch, and we carried the ditch to a place where we could irrigate with the water from the ditch, at a little valley.

Q. When did you first know of any claim that Ventura Trujillo had to this property?

A. At the time that we went to take possession of the spring.

Q. What was understood to be the character of his interest in the property?

Mr. CATRON: I object.

Q. I withdraw the question for the present.

Q. Previous to the time you and these others went to the spring, how was the spring used?

A. The water from it ran through an arroyo.

Q. How was it used?

A. The water was only used by travellers; they took it from the arroyo.

Q. Was any one pasturing at that place; if so, who?

A. I know by information that they used it; ranched there during the winter.

Mr. CATRON: I ask that that be stricken out as being hearsay.

The COURT: We will not pass on it now.

Q. Did you ever see any cattle there pasturing?

Mr. CATRON: Object as leading.

The COURT: He may ask it.

A. No.

Q. That is all.

Cross-examination by Mr. CATRON:

Q. You are one of the claimants to land within the limits of this grant, are you not?

A. No.

51 Q. You have been served as a defendant in this case, have you not?

A. Yes.

Q. You took up some land within the limits of this grant at one time, did you not?

A. Yes.

Q. Filed on it in the land office?

A. No.

Q. How does it happen that there is an application in your name down here in the land office for a piece of land within this tract?

A. The application for the land for which I applied is at Chupaderos.

Q. This land extends to Chupaderos, does it not; the land you claim extends out to and includes Chupaderos, does it not?

A. No.

Q. How far is Chupaderos from the Apache spring?

A. About 4 miles.

Q. In what direction?

A. They are to the west.

Q. How far is Chupaderos from Lagunitas?

A. The boundaries are right adjoining.

Q. Which direction is Chupaderos from Lagunitas?

A. To the west.

Q. Which is west?

A. Chupaderos.

Q. How far from Lagunitas is Chupaderos, if it is to the west of it?

A. About a quarter of a mile.

Q. Do you know what the boundaries of the land are to which Mr. Hays makes claim on the west?

A. No.

Q. You do not know, then, whether it extends to the west of Chupaderos or not, do you?

A. No.

Q. You have been summoned as a defendant in this case, have you not?

A. I have been summoned by the Government.

Q. Was that summons to you to appear here as a defendant in this case?

A. Yes.

Q. On which side of the Cañon de la Lagunitas are you?

A. To the west. I do not know the Cañon de la Lagunitas, but I am to the west from Lagunitas.

Q. How far is Lagunitas from Ojo del Apache?

A. It is about three miles and a half.

Q. How old were you in 1840?

A. Seven years old.

Q. Where did you live at that time when you were 7 years of age?

A. I was with my father, living right in Chupaderos under his control.

Q. How long did you live there?

A. Until the present time.

Q. Was that the first time when you ever passed by this property in the year 1840?

A. Yes.

52 Q. You were then 7 years old?

A. Yes.

Q. Where were you going?

A. I was hunting up some animals.

Q. How long were you at the spring?

A. I just went down in the spring and took some water and rode away with the animals.

Q. Then you say the next time was in 1855, when you went there to take possession?

Mr. POPE: I object, as he did not say that.

The COURT: The question may be asked.

A. Yes.

Q. What time in the year 1855 was it that you went there to take possession?

A. I am not certain about it; I am not positive; but I think it was in autumn, during the autumn.

Q. Was it as early as September, or before September or after September?

A. It was about September.

Q. Did you know Juan B. Lucero at that time?

A. No.

Q. Did you go to take possession for yourself or for somebody else when you went there in 1855?

A. I was asked by another person.
Q. Who?
A. Rafael Salazar.
Q. Where is Rafael Salazar now?
A. He is in Colorado.
Q. How old were you in 1855 when you went there to take possession?
A. I was about 23 or 24 years of age.
Q. Were you married?
A. I was married.
Q. Where was your family?
A. My family was in Puertecito, in the house of Rafael Salazar.
Q. How far is Puertecito from the Ojo del Apache spring?
A. About 9 miles.
Q. What direction?
A. To the west.
Q. Were you related to Rafael Salazar in any way?
A. I was his son-in-law.
Q. Your wife was then residing in the house of her father, was she?
A. She was only there temporarily.
Q. When did you first know Juan B. Lucero?
A. I did not know him.
Q. Did you never know him?
A. No.
Q. Did you ever know Juan Nepomuceno Lopez?
A. No.
53 Q. You say you never knew Ventura Trujillo?
A. No.
Q. Did you know any of his children?
A. Yes.
Q. What ones did you know?
A. Jose Francisco Trujillo, Andrea Trujillo.
Q. Whose wife was she?
A. Of Juan Catarino Romero.
Q. Did you know any other children?
A. No.
Q. What did you do when you went to take possession of the spring in 1855?
A. To dig a ditch from the spring to a little piece of land that was susceptible of irrigation.
Q. How large was that tract of land?
A. It was about 350 varas of land.
Q. In width or length?
A. In width.
Q. How wide was it?
A. It might have been less than 250 varas
Q. It might have been less than 25 varas, might it?
A. Yes.
Q. You and Rafael Salazar, Jose Maria Martinez, Gabriel Valen-

cia, and Jose Abad went there to take possession of that little piece of land, did you?

A. Yes, and others.

Q. How many more were with you?

A. About 13 of us.

Q. Your intention was to cultivate it, was it?

A. Yes; the piece of land.

Q. Was that piece of land enough for 13 of you to live on?

A. I do not think so.

Q. You did not stay there, then, very long, did you?

A. No.

Q. How long did you stay?

A. About 20 days.

Q. Then you all went away at the same time, did you?

A. Yes.

Q. And they never returned there to occupy the land?

A. Never, except a man named Crescencio Baca—I know this from information—in '59.

Q. Crescencio Baca remained there, did you say?

A. No; he also went away.

Q. What did you say about Crescencio Baca about the year '59?

A. He built a shanty there to sell some liquor.

Q. Was there any one else with Crescencio Baca at that time?

A. I do not know.

Q. Was Juan B. Lucero there with him?

A. I do not know.

Q. You do not know much that took place there, then, after '55, do you?

A. Not personally, but I know from information about the possession of Crescencio Baca.

Q. I do not want your information; I only want your per-
54 sonal knowledge; you did not see Crescencio Baca there, then; you only heard that he was there?

A. I did not see him.

Q. And you really do not know that he did go there of your own personal knowledge?

A. No.

Q. Of your own personal knowledge, you do not know whether anybody was on this property between 1840 and 1855, do you, of your own personal knowledge, without what other people told you?

A. Yes; I know.

Q. You said that you were not there during that time. How could you know it except by information?

A. I passed, traveled by that place several times before the year 1855.

Q. You said a while ago that you only went there in 1840, possibly one time before 1855, did not you?

Mr. POPE: Object to that, as he did not say it.

The COURT: He may ask it.

A. Yes; but I was one time there.

Q. That is all the time that you remember that you were there, is it, that you are positive of it, before 1855?
A. Yes.
Q. Then, between the time when you was there that one time in the summer of 1855 you do not know who was at the property, of your own knowledge?
A. No.
Q. That is all.

Redirect examination by Mr. POPE:

Q. How many times did you pass there between 1840 and 1855?

Mr. CATRON: We object to that, as he has answered it in chief.
The COURT: He may answer it.

A. I remember one time.
Q. Do you remember any other times?
A. I do not remember.
Q. What year was that you passed there?
A. In the year 1840.
Q. How many times subsequent to the year 1840?

Mr. CATRON: Object to that; he has already stated.
The COURT: You might ask him to fix the time.

A. I only remember passing by one time.
Q. What year was that?
A. In the year 1840.
Q. When was the next time you passed there?
55 A. I was afterwards at the Ojo del Apache in the year 1855.
Q. You never passed there between 1840 and 1855?

Mr. CATRON: We object, as he has answered that.
The COURT: Proceed. He said he was in 1840, and not again until 1855.

A. No.
Q. That is all.

Mr. CATRON: That is all.

JAMES H. WALKER, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. James H. Walker.
Q. What official position, if any, do you hold?
A. Register of the land office—U. S. district land office—Santa Fé, New Mexico.
Q. Are you acquainted with the section of New Mexico around in between Tecolote grant on the north and the Anton Chico grant on the south and the —— Ortiz grant on the east, a triangular piece of land there?

Mr. CATRON: We object to that.

Q. I mean land not included in any grant—any confirmed grant.

Mr. CATRON: We object to that.

No ruling.

A. I can tell so by these plats. That is the Tecolote grant, as shown by this plat, and here is the Anton Chico grant. These are the plats that Mr. Coleman asked me to bring up.

Q. I will get you to refer to the plat of New Mexico made by the General Land Office in the year 1894, and direct your attention particularly to that tract of land included between the —— Ortiz grant on the east and the Preston Beck and Anton Chico grant on the south.

A. That is this tract right in here; that is in township 13 north, ranges 16 and 17 east, and there is one there in 14 north, 17 east. I have the 13, 16, and 17; I have not the 14.

Q. Now, I will get you to state whether the public surveys have extended over that triangular tract as you have described it.

Mr. CATRON: We object to that and ask that that part extending over the public surveys be stricken out.

56 The COURT: It goes in under your objection.

Q. Refer to your plats and state what entries, if any, have been made in those subdivisions of public land.

Mr. CATRON: We object to that, as it is irrelevant, immaterial in this case. We object to all this.

The COURT: Any part that has been entered and completed and not excluded by confirmation.

A. In township 13 north, range 16 east, the survey was made July 8 to 22, 1887, and the plat filed in my office on the 7th day of February, 1889, and the one in 13 north, 17 east, was surveyed July 23 to July 5th. There was evidently a mistake in the year; it should be 1887, I think, or 1888; I do not know which. They have got it 1886, but I know it is wrong, because the township lines were surveyed in July, 1887, and these could not have been delivered until after that, and they were made in 1886; they have evidently made a mistake.

Q. I will get you to state what entries have been made on public land in these townships.

Mr. CATRON: I now ask that this testimony be stricken out because the surveys did not extend over this land in 1887. A petition was filed before the surveyor general twenty years prior to any survey of this land.

Mr. POPE: And it was rejected by the surveyor general.

Mr. CATRON: It was not rejected at our instance; it was rejected at the instance of the other side.

The COURT: If this land has been disposed of by the Government it will be excluded from the confirmation in case we confirm the grant.

Mr. POPE: I offer to prove by the records here that homestead entries have been made under the public land laws.

The COURT: The question as to whether an uncompleted homestead is such disposition of the land as is contemplated is one that this court has not determined.

Mr. POPE: I desire to have it in the record that the surveys have been extended over this land, and I offer to prove this. We ask leave of the court to withdraw these plats.

The COURT: You can make copies of them.

57 JUAN DE JESUS JARAMILLO, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Juan de Jesus Jaramillo.
Q. Your age?
A. Seventy-six years of age.
Q. Where do you live.
A. In El Viandante, on the Rio Pecos.
Q. Where did you live prior to the time you moved to your present place?
A. In Jorupa.
Q. When did you move from Jorupa to the place where you now live?
A. About the year '76.
Q. Previous to your removing how long did you live at Jorupa?
A. About ten years.
Q. Where were you born?
A. In Los Corales, on the Rio Grande.
Q. How old were you when you went to Jorupa to live?
A. I was born in the year '20, and I moved to Jorupa about the year '62.
Q. Do you know the place Ojo del Apache?
A. Yes.
Q. When did you first know the Ojo del Apache?
A. In the year '40.
Q. How did you come to know it then?
A. I was herding some sheep.
Q. Where were you herding sheep?
A. At Ojo del Apache.
Q. How long did you herd sheep there?
A. About one month.
Q. Was any one living there at that time?
A. No; it was vacant.
Q. Where were you living at that time?
A. In Puertecito, on the Rio Pecos.
Q. How far is that from the spring? Was it near or far?
A. I do not understand anything about miles.
Q. Was it near or far?
A. It is far.

Q. Did you from that time know this spring?
A. Yes.
Q. State when you visited the spring subsequent to that time. If so, when?
A. In the year '52; about the year '52.
Q. Was any one living at the spring then?
A. No; I did not see any one.
Q. You would have seen any one if they had been living there?

Mr. CATRON: We object to that.

A. Yes.
Q. Were there any houses at the spring at that time?
A. I did not see any.
Q. Any corrals?
A. I did not see any.
Q. Any acequias?
A. I did not see any.
58 Q. Did you know Ventura Trujillo?
A. Yes.
Q. Where did Ventura Trujillo live at that time?
A. In San Miguel; a little below the place.
Q. Did he have his family living at Ojo del Apache at that time?
A. No.
Q. Was he cultivating any land there at the spring?
A. No.
Q. Did he have any cattle at that time?
A. No.
Q. Did you ever know of Ventura Trujillo living at the Ojo del Apache?

Mr. CATRON: We object, as it is impertinent and immaterial whether he did or not.
The COURT: Ask it.

A. No.
Q. How was the spring used at that time, in 1852?
A. I only saw animals coming down to that place.
Q. Whose animals were at the spring?
A. Perhaps strayed animals.
Q. Were you ever at the spring between 1840 and 1852?
A. No.
Q. What was the general reputation at that time as to who owned the property at this spring, if it was being owned by any one?

Mr. CATRON: We object, as it is immaterial and not the best evidence and no foundation laid for it.
The COURT: He may ask it subject to the objection.

A. In the year '62 the late Mr. Cresencio Baca was residing at that place. That was the first resident that I ever knew at that place.
Q. In 1852 was that regarded as belonging to any one or as public property or what?

Mr. CATRON: We object to that.

The COURT: He may ask it subject to the objection.

A. No. At that time I did not see any habitation there.

Q. How was it regarded—as being public land or being private land?

Mr. CATRON: We object to that. It is simply calling his attention to what he wants.

The COURT: That will be sustained.

Q. Do you know to whom that land belonged in 1852?

Mr. CATRON: We object to that as being immaterial and impertinent, no foundation laid for it, and not the best evidence.

59 The COURT: We do not think you ought to go into that.

Q. That is all.

Cross-examination by Mr. CATRON:

Q. Can you read and write?

A. I cannot; my eyesight is not very good now, and my hand is poulticed, so that I cannot write.

Q. Could you ever read?

A. Yes; I could a little.

Q. The place called Corales, where you were born, is in Bernalillo county, on the Rio Grande, is it?

A. Yes.

Q. What age were you when you left there?

A. My father told me—I do not know—that I was still sucking my mother's breasts when he transferred himself from the Rio Grande to the Jorupa.

Q. How long did you live at Jorupa?

A. I do not remember. From San Jorupa my father went to Puertecito.

Q. Tell him, please, to answer my questions. What age were you when you were at Puertecito?

A. I might have been about 15 years of age.

Q. How long did you remain in Puertecito?

A. I remained until the year '52.

Q. Where did you go to then?

A. Then I went to Lagunita.

Q. Then where did you go?

A. And from there to Jorupa.

Q. Where is Jorupa?

A. A little below Lagunita, on the same arroyo.

Q. Inside of this property?

A. What grant?

Q. The Hays grant.

A. I do not know if it is within or out.

Q. Do you know the road called the Comanche road there?

A. I know two roads in that vicinity that we call Comanche.

Q. The one that goes to Chupinas?

A. Yes.

Q. Do you live south or north of that road?
A. To the south.
Q. How far south of Jorupa is the road which goes to Chupinas?
A. The road runs right in front of the little town.
Q. What was your occupation between the years 1840 and 1852?
A. Farming.
Q. You were farming at Puertecito during that time, were you?
A. Yes.
Q. Did you own lands there?
A. I had a strip of land.
Q. Own that yet?
A. No.
Q. He can go.

Redirect examination by Mr. POPE:

Q. Is the Comanche road north or south of Jorupa?
A. South.
60 Q. How far?
A. To the south, right near by; the road passes in front of the houses.
Q. How far is Puertecito from San Miguel?
A. It is somewhat far; ten miles, I guess. I do not understand about miles.
Q. Did you know Ventura Trujillo during his lifetime?

Mr. CATRON: We object to that.

A. Yes.
Q. Was he a man of property or poor? What was his worldly condition?

Mr. CATRON: It makes no difference whether he was rich or poor.
The COURT: He may ask the question subject to the objection.

A. I knew him to be a poor man.
Q. Did he have much cattle or sheep, or anything of that kind?

Mr. CATRON: We object to that.

A. I did not know any.
Q. Where did he die?
A. I do not know.
Q. That is all.

Recross-examination by Mr. CATRON:

Q. How far is the place where you lived, at Puertecito, to San Miguel?
A. I think about four miles.
Q. You did not know anybody at San Miguel, did you, at that time?
A. No.
Q. You did not visit San Miguel often, did you?
A. Yes.

Q. How often did you visit San Miguel from the year 1840 to 1852?
A. About every Sunday, almost.
Q. You went to mass. Is that it?
A. Yes.
Q. As soon as mass was over you went home?
A. Yes.
Q. You did not go around enquiring what the people up there knew, did you?
A. No.
Q. You are entirely ignorant on that subject, are you?
A. Yes.
Q. That will do.

Mr. POPE: That is all.

NICOLAS APODACA, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Nicolas Apodaca.
Q. Where do you live?
A. In Lagunita.
61 Q. What is your age?
A. I am about between 62 and 63.
Q. How long have you been living in Lagunita?
A. The first time I lived at Lagunita was from 1852 to 1857. I was married in 1852 there.
Q. Where did you live before that?
A. In Puertecito.
Q. Do you know the Ojo del Apache spring?
A. Yes.
Q. How long have you known it?
A. I knew it in the year 1842.
Q. How did you come to know it in the year 1842?
A. I was herder for me uncle.
Q. Do you remember what part of 1842 you were there?
A. Yes.
Q. What month?
A. I remained May, June, July, August, and September, herding there.
Q. You say you were herding your uncle's flocks?
A. Yes; some animals belonging to my uncles.
Q. Did you know Ventura Trujillo?
A. Yes.
Q. When did you first know Ventura Trujillo?
A. I had known him in San Miguel, and I also saw him at the Ojo del Apache in the year 1842.
Q. Just tell the court as to seeing him at the Ojo del Apache, how long he stayed, and anything connected with his coming there.
A. He stayed there about two or three days only.

Q. Do you remember when that was?
A. About April or September. It was in that year.
Q. Do you remember the exact month?
A. It was about April or May; in one of those two months.
Q. Did he come back to the spring while you were there?
A. No; I never saw him again there.
Q. Who was there with him when he came, at the time you speak of?
A. I understood that there was a son of his with him.
Q. Did he bring any animals?
A. No; if I would see them now I would recognize them.
Q. What did they do at the spring?
A. They made a kind of a dam with some brush and rocks, and then they came back.
Q. Did they have any oxen with them, or anything of that kind?
A. They had two oxen, one team of oxen, with them.
Q. Do you know whose oxen they were?
62 A. They said that they were oxen that had been loaned them by Don Lorenzo Lucero.
Q. Did they cultivate any land there that you know of?
A. No.
Q. While you were there did Damasio Salazar come there with them or any other one?
A. No; I did not see them.
Q. You knew Damasio Salazar, did you?
A. Yes.
Q. Did Rafael Aragon come there?
A. No; I did not see him.
Q. Did you know the Ojo del Apache after that time?
A. Yes.
Q. Did Ventura Trujillo ever live there?
A. No; never.
Q. Did any one live there?
A. At that place, at Ojo del Pache, there was no one living there that I saw, only Cresencio Baca, who had built a house.
Q. Who built the house?
A. My uncle, Cresencio Baca.
Q. Was there any house there when you went there?
A. No.
Q. Any cultivated land?
A. No.
Q. Any corrals?
A. No.
Q. When did Cresencio Baca go there?
A. My uncle, Cresencio Baca, went there in September.
Q. Do you remember what year?
A. In the year 1859.
Q. At the time you were there herd-ng sheep, did any one else herd there?
A. No.

Q. Between the year 1842 and the time Cresencio Baca built a house there, was the spring used for herding at all?

Mr. CATRON: We object, as no foundation has been laid for it.

A. The flocks used always to be watered there.
Q. Whose flocks?
A. They belonged to the Casados people and to various others.
Q. Did Ventura Trujillo use this as a pasturing ground, to your knowledge?
A. He never used it. He never had any animals.
Q. Where did Ventura Trujillo live?
A. In San Miguel.
Q. Where did he live when he died?
A. In San Miguel, a little below San Miguel, at Ojito Salado.
Q. Where did he and his family live from the year 1842 and up to the time of his death?

Mr. CATRON: We object to that, as there is no foundation laid for it.

A. In San Miguel.
63 Q. Did you know Damasio Salazar?
A. Yes.
Q. Where did he live?
A. At La Fragua, a little below Garambullo.
Q. Was he justice of the peace?
A. He was justice of the peace.
Q. State whether or not Damasio Salazar ever made grants of land to people in that vicinity.

Mr. CATRON: We object.
The COURT: We do not think that is competent.

Q. I desire, may it please the court, the record to show that I made the offer to prove that. That is all.

Cross-examination by Mr. CATRON:

Q. Where were you born?
A. In Puertecito.
Q. In what year?
A. Between the year 1832 and 1833.
Q. Was it between the year 1833 and 1834?
A. No; from the year 1832 to 1833.
Q. Then in the year 1840 you were only eight years old, were you?
A. Yes.
Q. In the year 1842 you were about nine years old.
A. Yes.
Q. Or about eight?
A. About eight.
Q. You did not know much about business at that time, did you?
A. No; I did not know anything about land business.

Q. When you were eight years old, what did you do, go to school?

A. I went to herd animals belonging to my uncles, to herd some goats.

Q. Who went with you?

A. In that year when I went and Ramon Gurule and Ruperta Sandoval.

Q. What kind of animals did you have?

A. Goats.

Q. How many?

A. About a hundred.

Q. It took three of you to take care of a hundred goats, did it?

A. No; Ramon Gurule herded some cows and Rupete herded also some of these goats.

Q. You moved about from place to place with them just as they do now?

A. Yes; grazing them.

Q. And whenever the night found you you stopped?

A. No; I went to Lagunita to sleep.

Q. You made your headquarters at Lagunita, did you?

A. Yes; lived there.

Q. You lived at Puertecito, did you?

64 A. Yes; I lived at Puertecito, but would go there to herd, and my uncles would farm at that place, and they would let me have some land also to farm.

Q. That was in 1842?

A. Yes.

Q. Then you said you were at the Ojo del Apache spring during the months of May, June, July, and August and September, were you?

A. Yes; working there.

Q. What was you working at during these months?

A. Cultivating, planting, and farming.

Q. Then during these months of May, June, July, August, and September, 1842, were not you working any lands at Lagunita?

A. I went with the goats, because my uncles would work on my land.

Q. Did you work any lands somewhere else?

A. No.

Q. Then you took the goats out in any direction you pleased from Lagunita, did you?

A. Yes; where they would ask me.

Q. And come back at night and stay there all night?

A. Yes; I would return home.

Q. And stay until the next morning?

A. Yes.

Q. And after the year 1842 where did you live up to 1852?

A. Between the years 1842 and 1852 I lived at Puertecito and Lagunita.

Q. You say you saw Ventura Trujillo at Ojo del Apache in 1842?

A. Yes.

Q. He was there with his son, you say?
A. Yes; I think it was a son of his.
Q. Was it Francisco Trujillo?
A. It might have been that one or another one; I do not know them now.
Q. Did you know Encarnacion Lopez?
A. No.
Q. Boys in those times did not get acquainted ver- far away from home, did they?
A. No.
Q. In those times Indians were pretty bad, were they?
A. Yes.
Q. And when they sent out you boys with sheep they did not let you go ver- far away from home, did they?
A. No.
Q. They told you to keep close in?
A. Yes; near the houses.
Q. While you were herding goats *that* at any time did the Indians come around?
A. No; I never saw them.
Q. Did you ever see an Indian?
A. Yes; when I was already grown I saw Indians.
65 Q. While you were herding at that time did any Indians come around you?
A. No.
Q. You stayed in close at home where the Indians would not come, did you?
A. Yes; we herded near the places.
Q. In the year 1852 to 1857 you were married, you say?
A. I was married in 1852.
Q. And from that time you lived where?
A. I lived in Lagunita from 1852 to 1857.
Q. Where were you in the year 1843?
A. At Ojo del Apache.
Q. Living at Ojo del Apache?
A. No.
Q. How long were you at the Ojo del Apache in 1843?
A. I would go there to herd some days and would return to the house.
Q. How many days were you there during the year 1843?
A. I do not remember, but went there many days.
Q. And from the year 1842 where were you?
A. In 1842 I was in Lagunita.
Q. In 1844 where were you?
A. I was at my house in Los Rincon.
Q. Where is Rincon?
A. It is on the opposite Puertecito, on the other side of the river.
Q. And you stayed there until 1852, did you?
A. I remained there; yes; until the year 1852.
Q. From 1842 to 1852 you were at Rincon?
A. Yes.

Q. What were you doing there?
A. Farming.
Q. Did you have any land of your own?
A. Yes.
Q. Do you know how old you were?
A. Yes.
Q. How old were you in 1843?
A. I may have been 12 or 13 years old.
Q. If you were 12 or 13, then you were born in 1830?
A. I do not know.
Q. You are not a very good calculator, are you?
A. At the present I cannot take an exact account.
Q. Where were you when the Texans were captured at Anton Chico?
A. I was in my house.
Q. What year was that?
A. It was in the year 1841.
Q. Which house were you at?
A. In my house.
Q. At what place?
A. At El Rincon, where I lived.
Q. How old were you then?
A. I might have been 12 or 8 or 9?
66 Q. If you were 12 in 1841 you were born in the year 1839 were you; ain't that so?
A. I was born in the year 1831 to 1832.
Q. You have slipped back two or three years since you commenced to testify, have you not?
A. How do you mean?
Q. You say you are 62 years old?
A. From 1831 to 1832; how have I slipped back?
Q. How old are you today?
A. I am about 62 or 63.
Q. What is this year—what year are we in now?
A. We are in the year 1896.
Q. Now, take 62 years from 1896, how many will be left?
A. It may be 34.
Q. Then, you must have been born in the year 1834 if you are now 62, going on 63.
A. I was born between the year 1832 and 1833. If I had taken the certificate of my baptism I would know now.
Q. Do you know what property the people in San Miguel owned in the year 1842?
A. I do not know what they had.
Q. Whether there were many of them; you do not know anything about it, do you?
A. Yes, there were many of them; but I do not know how they held their lands.
Q. And there were many of them, and you do not know whether they had any animals or not, do you?
A. Yes; I know some that had and some that did not.

Q. There were some that you did not know anything about, did you?
A. Yes; some that I did not know anything about.
Q. You were pretty well posted about what everybody owned in San Miguel in 1842, were you?
A. No; about the place where I lived I knew, and at other places like San Miguel and some of them.
Q. You did not live in the place—San Miguel—did you?
A. No.
Q. Did you go to San Miguel often?
A. We would go to mass. I would go with my mother.
Q. And as soon as mass was over you would go home?
A. Yes.
Q. You only attended to mass when you went there?
A. Yes.
Q. You did not enquire what property the people owned?
A. No.
Q. You did not see Damasio Salazar at Ojo del Apache?
A. I never saw him.
Q. He might have been there without your seeing him, might he not?
67 A. He might have gone; I do not know.
Q. And Rafael Aragon might have gone and you not have seen him?
A. I did not see him.
Q. He might have gone and you not have seen him?
A. Yes, but I do not know if he went.
Q. That is all.

Redirect examination by Mr. POPE:

Q. Did Encarnacio Lopez ever herd sheep at the Apache spring in 1842 or after that?
A. I did not know him.
Q. You never heard of such a person in that locality?
A. I do not remember.
Q. Did you ever know of such a person working for Ventura Trujillo?
A. No.
Q. That is all.

Mr. CATRON: That is all.

MANUEL APODACA, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified, upon direct examination by Mr. Pope, as follows:

Q. What is your name?
A. Manuel Apodaca.
Q. When were you born?
A. In the year 1824.
Q. Where were you born?

A. At Rincon de las Bacas.
Q. Where did you live when you were a boy?
A. In Rincon de las Bacas.
Q. Do you know the Apache spring?
A. Yes.
Q. When did you first know it?
A. In the year 1842.
Q. How did you come to know it?
A. I knew it vacant.

Mr. CATRON: We object to that as not being responsive.

Q. Did you know it after that?
A. Yes; I knew it after that.
Q. How did you come to know it after that?
A. I knew it without any circumstances.
Q. Were you ever there?
A. Yes.
Q. How many times were you there?
A. I do not remember how many times I was there; several times, but I do not remember the number of times.
Q. What were you doing there?
A. I would go there hunting up some animals.
Q. What was the year, do you remember?
A. Yes; in the year 1842 I was there.
68 Q. And any years after that?
A. Yes.
Q. At the time you knew this spring who was living there, if any one?
A. No; there was nobody there.
Q. Did you know Lorenzo Lucero?
A. Yes.
Q. Was he related to you in any way?
A. Yes.
Q. Did you know Ventura Trujillo?
A. Yes.
Q. Did you ever see Ventura Trujillo at the house of Lorenzo Lucero?
A. Yes.
Q. In what year did you see him at the house of Lorenzo Lucero?
A. In the year 1842.
Q. I will get you to state to the court the circumstances under which you saw him there; get you to state how he came there, and what was said, if anything, while he was there; what was said by him.

Mr. CATRON: We object as to what was said by him.
The COURT: Take it subject to the objection—anything about this land.

Q. Did Ventura Trujillo come from any place while you were there?
A. From Ojito del Apache.

Q. Now, just state anything he said about the Ojito del Apache when he came, and to whom.

A. He said to Don Lorenzo Lucero when he came there from Ojo del Apache and—Don Lorenzo Lucero asked him: Sir, how are you farcing with your lands at Ojo del Apache? He said, How are you making it with your land at Ojo del Apache, compadra? and Don Ventura Trujillo answered, Well, sir, I went to work at that land at Ojo del Apache that was given to me by Damasio Salazar, but was not successful in it because the water is not enough.

Mr. CATRON: We object to any conversation with Ventura Trujillo.

Q. Did he state anything further in connection with the matter at that time?

Mr. CATRON: We object to any conversation, because it does not bind us, as he is dead.

The COURT: Take it subject to the objection.

A. He said the three dollars that I paid to Don Damasio Salazar for that hijuela was worth more than the whole Ojo del Apache.

Q. Did he say as to his having any other interest in the land?

Mr. CATRON: We object to that.

69 A. He says that he was not interested in it.

Q. Were you ever at Ojo del Apache subsequent to that time—after that time?

A. Yes.

Q. How many times were you there after that?

A. I do not remember how many times, but I was there.

Q. Did Ventura Trujillo live there when you were there?

A. No.

Q. Was anybody living there at that time?

A. No.

Q. Where was Ventura Trujillo living at that — when you went there?

A. In San Miguel.

Q. Do you know where Ventura Trujillo died?

A. I think he died in San Miguel, because he lived there.

Q. Did you ever hear of his living at Ojo del Apache?

Mr. CATRON: We object to that as hearsay.

The COURT: Take it subject to the objection.

A. No.

Q. When you were at Ojo del Apache was there any houses there?

A. No.

Q. Any cultivated lands?

A. No.

Q. Any corrals?

A. No.

Q. Was that used as a pasture ground at that time?

Mr. CATRON: Object, as it is leading.
The COURT: Ask it.

A. Yes.
Q. By whom was it used?
A. Anybody; they were common pasture grounds.
Q. Who pastured there that you know of?
A. So many herders pastured there that I did not know who they were.
Q. Did Ventura Trujillo pasture his animals there?

Mr. CATRON: We object to that because there is no foundation laid for it.

A. No.
Q. Did Ventura Trujillo have any cattle or oxen?

Mr. CATRON: We object to that, as there is no foundation laid for it.

A. I do not know. I never knew them.
Q. Did you know Damasio Salazar?
A. Yes.
Q. Did you ever talk with him in regard to this land that Ventura Trujillo had?
A. Yes.
Q. Did Salazar, in that conversation, ever say anything to you about his having been authorized by any one to give him that land?

70 Mr. CATRON: Object to that, as we are not bound by his acts.

The COURT: That would not be competent unless the declaration was made in the presence of the other party.

Q. Was Ventura Trujillo present at any time when you had a conversation with Damasio Salazar in regard to this land?
A. No.

Mr. POPE: We offer to prove by this witness that Damasio Salazar made concessions of land at that time to numerous parties in that vicinity, claiming to have the right to do so; and we offer to prove further in his conversation with this party he never claimed to have any right through Governor Armijo to make a grant to this man or any other man; he claimed the right of his own free will.

Q. That is all.

Cross-examination by Mr. CATRON:

Q. You say you were born in Rincon de las Bacas?
A. Yes.
Q. How long did you live there?
A. I have always lived there; I was born there.
Q. How far is Rincon de las Bacas from the Ojo del Pache?
A. It is somewhat far.

Q. Fifteen or twenty miles?
A. It is possibly that far.
Q. How old were you in the year 1842?
A. I think I was about 18.
Q. Where were you living in 1842?
A. In the Rincon de las Bacas.
Q. What was your business?
A. Farming.
Q. Did you cultivate lands at Rincon de las Bacas in the spring and summer of 1842?
A. Yes.
Q. In those times the Indians were quite dangerous in that section of the country, were they not?
A. Yes.
Q. People did not travel around a great deal at that time, did they?
A. Yes.
Q. State whether they did or did not.
A. They did not travel because of the Indians were very bad.
Q. And people kept their herds pretty close at home, did they not?
A. Yes.
Q. Is there a town at the place Rincon de las Bacas?
A. It is not a town; there are only a few houses.
Q. How far is it from San Miguel?
A. About seven miles.
71 Q. The people in those little towns did not pay much attention to the people in the other little towns, did they, at that time?
A. No.
Q. They did not know what the people in the other towns owned, did they?
A. No.
Q. Nor did they know what the other people in the other towns did, did they?
A. No.
Q. You say you were at the Apache springs in 1842?
A. Yes.
Q. What month?
A. About March or April.
Q. What day of the month was it?
A. I do not remember.
Q. You say you were there looking for some lost animals?
A. Yes.
Q. You then went on by the place—you did not stop?
A. No; I did not stop.
Q. Then, you did not return to that place for a great may years afterwards?
A. I did not return for many years.
Q. You did not return until about 1855, did you?
A. Yes.

Q. Where was this place where you had a conversation with Salazar about the land of Ventura Trujillo?
A. In Los Chupaderos.
Q. What time was that?
A. It was about March or April.
Q. Of the year 1842?
A. In the year 1842.
Q. You are sure about that, are you?
A. I was there.
Q. You are not mistaken about the time?
A. No.
Q. Who else was present?
A. I do not remember; I do not remember if there was any other person present.
Q. Was it in the house or outdoors?
A. In the house of Lorenzo Lucero.
Q. You are not mistaken about it being March or April, 1842, are you, that that conversation took place?
A. No.
Q. You are just as certain about that as you are about anything else you have told here, are you?
A. Yes.
Q. What makes you remember so particularly it was the month of March or April when that conversation took place?
A. Because it was at that time.
Q. Do you remember what else took place in the month of April during that year?
A. No.
72 Q. That is the only thing that you remember that took place during these two months?
A. Yes.
Q. You were there during these two months, were you?
A. Yes.
Q. But you have forgotten everything that took place, although you were there?
A. What do you mean by my forgetting?
Q. You say that you remember that conversation took place in March or April, and you do not remember anything else?
A. I do not remember.
Q. Why is it that you can remember one thing better than you can another during these months?
A. Because I do not.
Q. Where were you in the month of January, 1842?
A. I was at Lagunita.
Q. What were you doing there?
A. I was working with my uncles.
Q. What kind of work?
A. Breaking lands.
Q. In the month of January, 1842, you were breaking up lands, were you?
A. And in March and in April.

Q. What did you do in the month of December, 1841?
A. Planting.
Q. Did you plant down there in the month of December?
A. No; in April.
Q. Did you plant in the month of January?
A. No.
Q. It sometimes freezes down there in the months of December and January, don't it?
A. Yes.
Q. Sometimes there is snow there?
A. Yes.
Q. You do not know whether there was snow on the ground in the month of January, 1842, or not, do you?
A. No; I do not know.
Q. You do not know whether the ground was frozen?
A. Yes.
Q. How do you know it was frozen?
A. Because it was very cold.
Q. How cold was it that year in January, 1842?
A. I do not know, but it was cold.
Q. Then you did not cultivate the ground during the time it was so cold, did you?
A. No.
Q. Then when you said a while ago that you were cultivating ground in the month of January, 1842, you did not state facts, did you?
A. We were breaking land.
Q. Do you break up ground when it is frozen?
A. At that time it was not frozen, in March and April.
Q. I asked you about January; do you mean to say that you were breaking up the ground in the month of January?
73 A. Yes; we were living at Lagunita; I was there with my uncles.
Q. But you were breaking up ground in the month of January?
A. Yes; we were living there and breaking up lands.
Q. Were you married then?
A. No.
Q. Do you remember how old you were when you were married?
A. I do not remember.
Q. Don't you think that is a circumstance that you might remember pretty well?
A. Yes; but a man has more to remember.
Q. But that is a very important thing to a man, is it not—getting married—and ought he not to remember that?
A. Yes; but I do not remember.
Q. Your memory is not very good now, is it?
A. It may be that way.
Q. You remember as well now as you did fifty years ago?
A. I do not think so.
Q. There are a great many things that you have forgotten, are there not?

A. It is possible that it is so.
Q. Most everything is a little foggy about your memory, is it not?
A. It may be that way.
Q. Who has been down there asking you about your evidence you would give?
A. Where?
Q. Down at your place.
A. That man there (pointing to Mr. Tipton).
Q. That man with the red mustach-?
A. Yes.
Q. He told you what he wanted you to testify to, did he?
A. No.
Q. What did he tell you to do?
A. He asked me if I knew anything about the land of Ventura Trujillo.
Q. Then you did know that Ventura Trujillo had some land there?
A. Yes.
Q. At Ojo del Pache?
A. Yes.
Q. That is all.

Redirect examination by Mr. POPE:

Q. You know also that he abandoned that land, don't you? Do you know what he did with that land?

Mr. CATRON: We object.
The COURT: He may ask it.

A. I do not know, sir, that Ventura Trujillo made any improvements on his land.
Q. Who first built a house out there?

74 Mr. CATRON: We object, as he is going into the case-in-chief again.
The COURT: That is a new matter; that is not redirect examination; it is new matter.

Q. You said you were in 1842 at Ojo del Apache?
A. Yes.
Q. When were you there the next time?

Mr. CATRON: We object to that; it is simply explanatory.
The COURT: He may ask it.

A. I do not know when I was there again. I do not remember, but I know that the person first to make some improvements at Ojo del Apache was Cresencio Baca.

Mr. CATRON: I move to strike that out.
The COURT: It may be stricken out.

Q. When Ventura Trujillo came to the house of Lorenzo Lucero did he bring any oxen with him?

Mr. CATRON: We object to that; he has testified that he does not remember the matters that took place.

The COURT: He may ask it.

A. He had no oxen, he himself in person, but it was said that he had taken a team of oxen.

Q. Whose oxen?

Mr. CATRON: We object to that as being incompetent.

The COURT: That we do not think is competent.

Q. Who said that he had taken a team of oxen?

Mr. CATRON: We object to that.

The COURT: Sustained.

Q. Do you know how long Ventura Trujillo had been away from Ojo del Apache when he came back?

Mr. CATRON: We object to that.

The COURT: He may ask him if he knows.

Q. When Ventura Trujillo went from Ojo del Apache the first time, I was not at the house of Lucero, but I was present at the time when he returned to the house of Lorenzo Lucero from Ojo del Apache. I have stated that he returned alone to the house of Lorenzo Lucero, and I was there then.

Q. Between that time and the time Cresencio Baca made
75 improvements were you at the Ojo del Apache?

Mr. CATRON: We object to that.

The COURT: He may ask it.

Q. Between the time of this conversation in the year 1855 did you visit the Ojo del Apache?

A. No.

Q. Were you there after this conversation the first time?

A. I do not remember.

Q. How long was it—a long or short time?

Mr. CATRON: Object to that.

A. A short time.

Q. Was it as much as a year?

A. I do not remember.

Q. As much as two years?

Mr. CATRON: Object to that.

The COURT: The witness cannot fix the time.

Q. That is all.

Mr. CATRON: That is all.

Mr. POPE: It is admitted by the Government that there is no grant paper from Governor Armijo to Ventura Trujillo in the possession of the alcalde of San Miguel del Bado, New Mexico.

The COURT: Take an adjournment until ten o'clock tomorrow.

The hour of ten o'clock of November 16th, 1896, having arrived,

the further hearing of the above-entitled cause was resumed, and the following proceedings were had therein in open court:

Mr. POPE: It is agreed that a portion of the Spanish and Mexican archives in this Territory were lost, sold, or destroyed in the year 1870, containing grants and other papers. It is further stipulated between the parties that the index made by Antonio B. Vigil, completed in the year 1851, and entitled a general index of all documents of the governments of Spain and Mexico up to the year 1846, contains no mention of any grant of the Ojo del Apache case.

Mr. CATRON: We admit that the index was so made, but we do not admit that it contains all the papers which were in the archives. It is admitted that the index does not contain any reference to the Cubero grant.

76 The COURT: The book contains no reference to this grant, found in the surveyor general's office, completed in the year 1851.

Mr. POPE: We introduce in evidence all the papers in reported number 72.

Mr. POPE: It is further stipulated between the parties that the Vigil index, before referred to, contains no reference to the grant papers in the case of Juan Chaves *versus* The United States, No. 1, Cubero case. It is further stipulated that certain archives in the Spanish and Mexican governments were lost or destroyed in the year 1837.

Mr. POPE: That is the Government's case, may it please the court.

The COURT: Anything further, Mr. Catron?

Mr. CATRON: Nothing further, your honor.

This is all the evidence that was introduced in the above-entitled cause.

SANTA FÉ, NEW MEXICO, *December 9th*, 1896.

I hereby certify that the above and foregoing thirty-five pages contain a full, true, and correct transcript of all the evidence introduced in the above-entitled cause.

W. J. McPHERSON,
Official Stenographer.

77 EXHIBIT A.

Translation.

Seal fourth. (Seal.) One-fourth real.

For the years eighteen hundred and forty and eighteen hundred and forty-one.

In this second demarcation San Miguel del Bado, on the second day of the month of July of the present year eighteen hundred and forty-two, before me citizen Damasio Salazar, justice of the peace of said precinct personally present appeared citizen Bentura Trujillo, citizen and resident of the first demarcation, soliciting the place and land commonly called the Ojito del Apache, to establish in company with his children, a farm on which he believes he will have the means necessary for the support of a large family, and to give tithes

(illegible) and the holy church their corresponding portions, and I said alcalde finding the petition to be a just one and acting in conformity with the supreme decrees, have made him said donation in the name of God and the supreme Mexican nation, so that as a good compatriot he may make use of it, observing the requirements which our laws provide, under the condition and restrictions that if he does not provide a protection to prevent the damages which may result to him, he is under obligation to bear them, it being commons and pasture grounds of the inhabitants of this precinct; and the boundaries corresponding to said grant are on the north the mesa; on the south the old road to Los Chupaines; on the east the Mesa de los Chupaines; and on the west the hills bordering on the Cañoncito de la Lagunita; and in order that this foregoing instrument may have the force and validity by law required the aforesaid Trujillo requested me to interpose my authority and judicial decree, and I the said justice declared that I would interpose and did interpose as far as I am authorized by law, those of my attendants signing with me with whom I act by appointment. for the notorious lack of a notary public there being none of any kind in this department. In form of law, to all of which I certify.

DAMAISO SALAZAR.

Attending:
RAFAL. ARAGON.
Attending:
SALVADOR GONZALES.

And it is given on this ante-stamped paper, there being none of the proper stamp.

SALAZAR.

78 The foregoing document of donation is now transferred by the heirs and by Legima, who is the widow of Trujillo, deceased, the donee, the same being in legal sale conveyed to citizen Juan Lucero, that he may in good faith possess, sell, and alienate the same to any person or persons according to his pleasure. The said land is and was acquired by donation, and Mr. Lucero can register the document, said sale having been made of our entire free will; and, further, no person shall bring suit or make any complaint upon the part of the widow, heirs, or successors, and if any one should do so, let him not be heard either in court or out of it, the said Lucero conforming himself to the circumstances and requirements in said document mentioned, for we only agree to make good the sale whenever required by the parties, in all else it remains at his responsibility and care, as we only sell him the document with our right, domicil, and occupancy which we had therein.

In witness whereof we have signed this extrajudicially with only three witnesses, but desire this to be as valid as if done judicially, and Juan Lopez, attorney for his mother and brothers and sisters, this 21st of September, 1855, at San Miguel del Bado.

JUAN NEPOMUCENO LOPEZ.

Witness: ANTO. ARMIJO.
Witness: JOSE ANTO. CASAOS.
Witness: MARCELINO MOYA.

I, the undersigned, clerk of the probate court, certify that the foregoing document and conveyance are registered in Book 3 of Documents of Conveyance, pages 36 and 37, this 10th day of May, A. D. 1866.

[SEAL.] JOSE L. RIVERA, *Clerk.*

The foregoing is a correct translation from the original in Spanish, to the best of my knowledge and belief.

J. H. WATTS, *Translator.*

Subscribed and sworn to before me, at Santa Fé, N. M., this 16th day of September, A. D. 1872. Witness my hand and official seal.

JOHN WATTS,
Notary Public.

79 SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *September* 30, 1872.

The foregoing translation, having been by me compared with the original in Spanish now on file in this office and found correct, is hereby adopted as the official translation.

DAV. J. MILLER, *Translator.*

(Endorsed:) File 148. Ventura Trujillo. Translation. Grant to Trujillo and deed Lopez to Lucero.

This document is duly recorded on pages 106, 107, and 108 in vol. 4 of Land Claims Records in the office of the surveyor general.

80 Know all men by these presents that I, Juan B. Lucero, of the county of San Miguel, and Territory of New Mexico, for and in consideration of three hundred dollars, to me paid by John L. Taylor and Henry D. Gorham, of the county and Territory aforesaid, the receipt of which is hereby duly acknowledged, have conveyed, renounced, and demitted to the said gentlemen, John L. Taylor and Henry D. Gorham, their heirs and assigns, all the title, right, and property which I have in that part or parcel of land known by the name of the Ojo de Apache, situated in the county and Territory aforesaid, bounded and described as follows, to wit: On the north the mesa, to where it forms a point; on the south the old road to the Chupaines; on the east the Mesa of the Chupaines; on the west the hills bordering on the Cañon de la Lagunita, with all its privileges and appurtenances to it appertaining; to have and to hold the above-described premises to the said John L Taylor and Henry D. Gorham, their heirs and assigns, for their use and benefit forever.

And in witness thereof I sign and seal the present document on the 24th day of May, A. D. 1866.

his
JUAN B. LUCERO. x [SEAL.]
mark.

Signed and sealed in presence of—
LEVI J. KEITHLY.

(10 five-cent revenue stamps.)

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

Be it remembered that Juan B. Lucero, who is personally known to me, one of the justices of the peace in and for the county and Territory aforesaid, to be the same person whose name is subscribed to the foregoing document as executing the same, this day appeared before me in said county and acknowledged that he had executed the said document voluntarily for the uses and purposes therein mentioned.

Given under my hand this 24th of May, A. D. 1866.

RUMALDO LUSERO,
Justice of the Peace.

I, the undersigned, clerk of the probate court, certify that the foregoing document was registered in Book 3 of Register of Documents, pages 23 and 24.

In testimony whereof I set my hand and the seal used by the probate court.

Vegas, New Mexico, May 10, 1866.

JOSÉ L. RIVERA,
[SEAL.] *Clerk of Probate Court.*

81 The foregoing is a correct translation of the original Spanish, to the best of my knowledge and belief.

J. H. WATTS.

Sworn to and subscribed before me this 16th day of September, A. D. 1872. Witness my hand and official seal.

JOHN WATTS,
[SEAL.] *Notary Public.*

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *September* 30, 1872.

The foregoing translation, having been by me compared with the original in Spanish now on file in this office and found correct, is hereby adopted for the official translation.

DAV. J. MILLER, *Translator.*

82 EXHIBIT "A."

Original in Spanish.

Sello Cuarto. (Sello.) Una Cuartilla.

Para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

En esta 2a. Demarcasion de Sn. Migl. del Bado a los dos Dias del mes de Julio de este presente año de mil ochosientos cuarenta y dos. Hante mi el C. Damasio Salasar Jues de pas de dho. partido, conparesio presente pr. su propia persona el C. Bentura Truxillo vesino y rresidente en la primer Demarcasion de esta solecitando el punto y terreno qe. comunmente llaman el ojito del apache pa. poner una

finca de labor en conpa. de sus hijos en lo que considera tener los sustensilios nesesarios pa. el abasto de una familia cuantiosa y dar ha diez (torn) (illegible) y la Sta. yglesia la parte qe. le toca y llo Dho. Alcalde mirando el qe. es una solicitud justa t arreglandome a los supremos decretos le he agrasiado dha. dona ha nombre de Dios y de la suprema Nasion Mexicana pa. qe. como buen conpacriota haga uso á ellas guardando los rrequisitos qe. nuestras leyes previenen bajo la condicion y limites de que si no pone rresguardo pa. ebitar los Daños qe. le puedan sobrevenir esta en la obligasion de sufragarlos pr. ser unos sexidos y pasteos de los abitantes de esta Demarcasion; y son sus correspondientes linderos de Dha. posesion pr. el Norte la mesa el camino viejo de los chupaines por el sur; por el oriente la mesa de los chupaine y pr. el poniente las lomas qe. besindan con el cañonsito de la lagunita y pa. q. esta predicha escritura tenga la fuerza y balidacion qe. en Dro. se rrequiere me suplico el rreferido Truxillo einterpusiera mi autoridad y y judisial decreto y llo el Nominado jues dije qe. la einterponia einterpuse cuanto pr. Dro. mes conferidó firmando con migo los de mi asistencia con quienes acto por rresitoria a notoria falta de escribano publico qe. de ninguna clas lo hay en este Departamto. en la forma del Dro. qe. de todo Doy fe.

DAMAISO SALAZAR. [RUBRICA.]

De Assa.:
RAF'L ARAGON. [RUBRICA.]
De Assa.:
SALBADOR GONSALES. [RUBRICA.]

Y ba en el presente papel pasado pr. no aber del sello qe. corresponde.
SALASAR.

El anterior domento. de dona en esta ven es traspasado por los herederos y la Legima ques la viuda del finado Trujillo que fue Donado; esta en venta Legal se le traspasa al Cuidadano
83 Juan Lusero; para que la gose de buena fee bendiendola enargunarlar en la persona ó personas que mas sea su boluntad, dicho terreno es y fue adquerido en Dona; y el Sor. Lusero puede enrregistar el documento; Dicha benta ha sido con toda Nrra. boluntad; sobre que no habra quien le ponga pleito ni demanda alguna por la viuda herrederos ni subsesores y si alguno se lo pusiere no sea oido en Juicio ni fuera del; arreglandose Dho. Lusero a las sircunstancias y Requicitos que el mismo Documento menciona; pues solo le bendemos el Documento con Nrro. Derecho Domicilio y Vecindad que a el teniamos, para todo lo cual lo firmamos estrajudicial solo con tres testigos pero queremos que sea baledero como si Judicial fuera y Juan Lopez Apoderado por su madre y hermanos hoi 21 de Fbro. de 1855 en Sn. Miguel del Bado.

JUAN NEPOMUSENO LOPEZ. [RUBRICA.]

Testigo:
ANTO. ARMIJO. [RUBRICA.]
Testigo:
JOSE ANTO. CASAOS. [RUBRICA.]
Testigo:
MARCELINO MOYA. [RUBRICA.]

Certifico yo el abajo firmado Escribano de la Corte de Pruebas que el antecedente documento y traspaso quedan enrregistrados en el libro 3°. de trazpasos de documentos pagn 36 y 37 este dia 10 de Mayo A. D. 1866.

[SELLO.] JOSE L. RIVERA, *Escribano.*

(Endorsed:) This document is duly recorded on p. 115 of V. 4 of Land Claim Records, in office of surveyor general.

84 Sepan todos los hombres por estas presentes que yo, Juan B. Lucero, del condado de San Miguel y Territorio de Nuevo Mexico, por y en consideracion de trescientos pesos á mi pagados por John L. Taylor y Henry D. Gorham, del condado y territorio antedicho, el recibo de los cuales por el presente es debidamente reconocido, he traspasado, renunciado y hecho dimision á los dichos señores John L. Taylor y Henry D. Gorham sus herederos y asignantes, todo el título, derecho y propiedad que tengo en aquella porcion ó suarte de tierra conocido por nombre de Ojo de Apache, situado en el condado y territorio antedico, lindado y receñado como sigue, A. S. B., por el norte la mesa hasta donde forma punta; por el surd, el camino viego á los Chupaines; por el criente la mesa de los Chupaines; por el poniente las lomas que resindan con el cañon de la Lagunita, con todos sus previlegios y apertenencias que á ella pertenece De haver y tener los ariba traspasado premisos á los dichos John L. Taylor y Henry D. Gorham, sus herederos y asignantes, para el uso y beneficios de ellos para siemprey para que consta firmo y sello el presente documento á los 24 dias de Mazo, A. D. 1866.

JUAN B. LUCERO. su x marca. [SELLO.]

Firmado y sallado en la presencia de.
LEVI J. KEITHLY.

TERRITORIO DE NUEVO MEXICO, }
Condado de San Miguel. }

Sea tenido en acuerdo que Juan B. Lucero, quien es personalmente conocido por mi, uno de los juezes de paz en y para el condado y territorio antedicho, de ser la misma persona cuyo nombre está suscrito al documento á la buelta como otorgante de el, hoy mismo compareció ante mi, en el dicho condado, y confesó que ejecutó el dicho documento volutariamente para los usos y fines – el mencionados.

Dado bajo mi mano hoy 24 de Mazo, A. D. 1866.

RUMADO LUSERO,
Jues de Paz.

(10 estampas de a 5 ctvos, canceladas.)

Yo, el abajo firmado escribano de la corte de pruebas, certifico que el antecedente documento fue enregistrado en el libro 3° de registros de documentos, pag. 23 y 24 En testimonio de lo cual pongo mi nombre y el sello usado en la corte de pruebas.

Vegas N. M., Mayo 10, 1866.

JOSÉ L. RIVERA,
Escribano de la Crte de Pbas.

85 EXHIBIT "B."

In the Court of Private Land Claims, Santa Fé, New Mexico. August Term, 1896.

MAY HAYS *versus* UNITED STATES. } No. 101. Ojo del Apache Grant.

Depositions Taken Before Fuller, A. J., Federal Building, Santa Fé, New Mexico, August 22nd, 1896, 2 P. M.

Appearances: Messrs. Catron, Spiess & Gortner for plaintiff; ——, Esq., assistant U. S. attorney; Wm. H. Pope, for the Government.

PASCUAL BACA, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Catron as follows:

Q. State your name, age, and residence.
A. My name is Pascual Baca; I am 63 years old; I live at Anton Chico, Guadalupe county, New Mexico.
Q. Was you acquainted with Ventura Trujillo?
A. Yes; I knew him well.
Q. Is he living or dead?
A. He is dead.
Q. When did he die?
A. Many years ago; I do not remember.
Q. Was he or not living in the year '46?
A. Yes.
Q. Where was he living at that time?
A. He was living at Ojo del Apache.
Q. When did you first see him at Ojo del Apache?
A. In 1840.
Q. What was he doing there?
A. He lived there; he had a little ranch in '40.
Q. What improvements had he there, if any?
A. He had a little shanty, and he had planted cornfields and a little garden; that is what he had.
Q. Had he any other property there; if so, what?
A. Yes; he had furniture.
Q. Any animals?
A. Yes; goats and horses and burros; I do not remember whether he had any cattle or not.
Q. Where was he, if you know, in the year '42?
A. He was there yet and afterwards.
Q. How long did he remain at Ojo del Apache?
A. About 10 or 11 years.
86 Q. After what date?
A. After 1840.

Q. Were you acquainted with Damasio Salazar?
A. Yes.
Q. Did you know him about the year '42?

Mr. POPE: We object, as it is leading.

A. Yes.
Q. Where did he reside about the year '42?
A. He lived in the Pecos rivera place around Fragua.
Q. How far from the place Ojo del Apache?
A. About 12 or 15 miles.
Q. Do you know if he had any official position in the year '42?
A. Yes.
Q. What position was it, if you know?
A. He had two; he was judge and captain of militia.
Q. What kind of a judge was he; what was he called?
A. Constitutional judge.
Q. Of what place?
A. At the place El Bado.
Q. What is the full name of the place El Bado?
A. At that time they called it El Bado; now San Miguel.
Q. Was it not called San Miguel del Bado?

Mr. POPE: We object, as it is leading.

A. Yes.
Q. How was that place designated as being a demarcation?
A. The demarcation of El Bado.
Q. And Salazar was justice of that demarcation?

Mr. POPE: We object, as it is leading.

A. Yes.
Q. Did you ever see him write?
A. I saw him write; he wrote very bad.
Q. Would you recognize his signature if you saw it?
A. It is possible that I would.
Q. Look at the name Damasio Salazar and see if you have ever seen that signature before. (Hands witness paper.)
A. That is the signature of Donacio Salazar, and his secretary, Rafael Aragon, has also signed it.
Q. Did you ever see Rafael Aragon sign his name?
A. He was my teacher long time ago.
Q. How frequently have you seen Rafael Aragon write?
A. Many times; I was his disciple; innumerable.

87 Q. State, if you know, whose signature is the name of Rafael Aragon signed to this paper which has been shown you.
A. That is the one of Rafale Aragon (pointing).
Q. Did you know Rafael Aragon in the year '42?
A. Yes.
Q. Where did he reside in the year '42?
A. On the Rio Puerco, at a place called Puertocito.
Q. How far from the house of Damasio Salazar did he reside?
A. About one and a half miles.

Q. Did he have any official relations with Damasio Salazar, if you know?

A. Yes; he was the secretary of Damasio Salazar.

Q. Secretary of Salazar in what capacity?

A. He was justice alcalde.

Q. He was secretary in his alcalde's court?

A. Yes.

Q. Do you know Salvador Gonzales?

A. Yes.

Q. Did you know him in the year '42?

A. Yes.

Q. Did you ever see him write his name?

A. No; I do not remember. I knew him well, but I do not remember having seen him write.

Q. Where was Salvador Gonzales living in '42?

A. In San Miguel.

Q. How far from the house of Damasio Salazar?

A. About 6 miles.

Q. Do you know the property called Ojo del Apache, the property in this case?

A. Yes; I knew it.

Q. State whether or not you know anything about the property having been placed in the possession of Ventura Trujillo by Damasio Salazar. If so, state what you know about it.

Mr. POPE: We object as leading.

A. Yes. When Juan Bautista Lucero bought from the heirs of Antonuo Trujillo they showed me a title that Damasio Salazar had given to Trujillo by order of Manuel Armijo.

Mr. POPE: Object to the last part as hearsay.

Q. When was that?

A. '54 or '55.

Q. Would you recognize that paper now?

A. It is possible I would.

Q. Look at this paper and see if it is the same one or not. (Marked Plaintiff's Exhibit "A.")

A. I believe this is the paper. I think this is the paper.

88 Q. Were you ever present at any time when Damasio Salazar gave possession of that tract of land to Ventura Trujillo?

Mr. POPE: Object, as it is leading.

A. No; I was not present.

Q. Do you know what the boundaries of the tract of land called the Ojo del Apache are?

A. Yes.

Q. State the boundaries if you know them.

A. On the north, a mesa—a big rock on the mesa; on the east, to the Puertocito of the valley Redonda de la Lagunita, and on the south, the mesa of the Cañon de la Lagunita: from there southeast is the old road of the traders with the Comanches; then from the

southeast to the north the Cerrito of a high mesa until it connects with the beginning.

Q. Has that mesa on the north any name?

A. The Mesa Ojo del Apache.

Q. What is the Ojo del Apache?

A. It is a spring at that ranch that is called Ojo del Apache.

Q. Is this mesa on the north of this spring?

A. The mesa is to the north of the ranch.

Q. Is it the first mesa to the north?

A. Yes.

Q. Did you know at that time a road which went to Chupainas?

A. Yes; I knew it.

Q. Where was that road, if you know, in regard to the spring called the Ojo del Apache?

A. It is the old road of the Comanche traders which comes down to Los Chupainas.

Q. Which direction is it from the spring?

A. It is to the south of the spr-ng.

Q. Do you know a mesa call- the Mesa Chupainas?

A. Yes: from where the mesa of the Apaches ends the mesa of the Chupainas commences; it is lower, but it is a continuation of the higher mesa.

Q. What direction is the Mesa Chupainas from the Apache spring?

A. Between the south and east.

Q. Do you know the Cañon de la Lagunita?

A. Yes.

Q. Do you know the hills which border on the Cañon Lagunita?

A. Yes; that is where the boundary goes.

Q. Which direction are the hills which border on the Cañon de la Lagunita from the Apache spring?

A. West.

89 Q. How long have you known this tract of land?

A. I was born there, and I live there now.

Q. Do you live within the tract of land or merely close to it?

A. I lived near it very many years, and I live near it now; I live nearly above.

Q. You said Ventura Trujillo occupied — for about 10 or 11 years?

A. Yes.

Q. How did he occupy it?

A. Something like that; he lived there; he had this ranch, as I have stated.

Q. What family, if you know, did he have with him?

A. He had a family; sons; also women.

Q. Were there any other settlements in that vicinity?

A. A little below from there; at Lagunita.

Q. During the time that Ventura Trujillo lived on this property, state whether anybody else, if you know, claimed to own or possess the property besides Ventura Trujillo, possessed under him, or any part of it?

Mr. POPE: Object to it as hearsay, immaterial, and incompetent and irrelevant.

A. During the time Ventura Trujillo occupied it I did not hear of anybody claiming it.

Q. While Ventura Trujillo was occupying it how was it respected and regarded by the people in that section of the country?

Mr. POPE: Object on the same grounds.

A. They respected it as the judicial possession of Ventura Trujillo.

Q. How was it regarded as to its being owned by him?

Mr. POPE: Object on the same grounds and leading.

A. As having been granted to him by Governor Armijo.

Mr. POPE: We ask to strike out the last answer as not being responsive to Mr. Catron's question.

Q. As having been granted by Armijo and Salazar?

Mr. POPE: Object to it on the same grounds, and move to strike it out, and leading.

A. Yes; because he lived there.

Q. Did you know Juan Bautista Lucero?

A. Yes.

Q. Is he living or dead?

A. Dead.

90 Q. Did you know Rafael Aragon?

A. Yes.

Q. Is he living or dead?

A. He is dead.

Q. How long prior to this have they been dead?

A. Rafael Aragon has been dead about 8 years and Juan Bautista Lucero about 4 years; he was an uncle of mine.

Q. Did you know Guadalupe Miranda?

A. No.

Q. Did you have any knowledge as to there being a grant of land at that place to Ventura Trujillo at that time?

Mr. POPE: Object on the same grounds.

A. Yes.

Q. What was your knowledge?

A. I knew that Damasio Salazar had given it to Ventura Trujillo.

Q. How did you obtain that knowledge?

A. I lived there; my father said so, and everybody said so, and that is the way I knew it.

Q. Did you at any time propose to settle on that property yourself?

Mr. POPE: Object as immaterial.

A. No; I lived at Lagunita, right near.

Q. Did you have any intention of settling upon it?

A. Yes; I had.

Q. What was the reason you did not settle on it?

Mr. POPE: Object as immaterial, incompetent, and hearsay as to his reasons for not going there.

A. I respected it because it belonged to somebody else. I knew it belonged to somebody else.

Q. Did you know who it belonged to?

Mr. POPE: Object for the same reasons.

A. To Ventura Trujillo.

Q. That is all.

Cross-examination by Mr. POPE:

Q. You know that Damasio Salazar had given Ventura Trujillo this land, did you?

A. Yes.

Q. How old did you say you was?

A. 63 years old.

Q. Where did you say you were born?

A. At La Fragua, where Salazar lived.

Q. How far is that from Ojo del Apache?

A. About 12 or 15 miles.

Q. That is within the boundaries you have just mentioned, is it?

A. La Fragua is here at the Rio Pecos, and the boundaries are beyond the Lagunita.

91 Q. Which side of Lagunita is it—east or west?

A. To the east.

Q. What direction is La Fragua from Ojo del Apache?

A. To the west.

Q. How far is San Miguel del Bado from La Fragua from the town plaza of San Miguel?

A. About 6 miles.

Q. What direction is it from San Miguel?

A. South.

Q. How far is La Fragua from Anton Chico?

A. 12 or 15 miles.

Q. What direction is La Fragua from Anton Chico?

A. It is between east and north; going from La Fragua to Anton Chico we go southeast.

Q. Is this La Fragua within the boundaries you have mentioned?

A. No; they are somewhere far from there.

Q. Is that where you lived when you were a boy?

A. Yes; when I was small. My father lived there when I was 6 years old.

Q. That is where Damasio Salazar lived, is it?

A. He lived at La Fragua.

Q. How long did he live at La Fragua?

A. Many years.

Q. Is that where he lived until he died?

A. No; he died at Sapello, on the other side. He lived there afterwards.

Q. Did he ever live on this Ojo del Apache tract you have mentioned?

A. I never saw him.

Q. Where did Ventura Trujillo live?

A. When I knew him he was living at Ojo del Apache.

Q. How old were you when you first knew him?

A. 6 years.

Q. What year was that?

A. In 1840.

Q. He was living at Ojo del Apache then?

A. Yes.

Q. How long did Ventura Trujillo live there?

A. He lived there about 10 or 11 years; I do not remember.

Q. In 1840 you knew him first?

A. In 1840, I knew him then.

Q. Was he claiming this Ojo del Apache then?

A. Yes.

Q. And he continued to claim it as his from then on, did he?

A. He lived there.

Q. He was claiming it under this right that he had when you first knew him, was he?

A. Yes.

Q. When you first knew him in 1840?

A. Yes.

Q. How long since you have seen any handwriting of Damasio Salazar?

A. Not very long; 25 or 26 years.

Q. 25 or 26 years since you have seen any handwriting of Damasio Salazar?

92 A. Yes; I have seen it since.

Q. How long was it before that that you ever saw any handwriting of Damasio Salazar?

A. I had seen it all the time.

Q. How did you happen to see it all the time?

A. He was at La Fragua; he was my teacher; we were together all the time.

Q. You do not know Damasio Salazar's handwriting very well, do you?

A. I knew it quite well.

Q. He did not write much; he had a secretary to do his writing.

A. He wrote very bad.

Q. And he wrote very little?

A. Yes; he only wrote his name.

Q. You never saw this paper before, did you (Plaintiff's Exhibit "A")?

A. Yes; I have seen it.

Q. How many times before have you seen it?

A. This paper I have seen once or twice.

Q. You never examined it closely when you saw it, did you?

A. Yes; I examined it well.

Q. How did you examine it well? You did not have any interest in this property?

A. Because the title belonged to an uncle of mine when he bought from Ventura Trujillo, Bautista Lucero, on my mother's side.

A. Bautista Lucero was an uncle of yours?

A. He was an uncle on my mother's side.

Q. And he claimed this property at one time?

A. Bautista Lucero bought it from the heirs of Ventura Trujillo.

Q. You claim an interest in this property, don't you?

A. No.

Q. Where do you say you live now?

A. At Anton Chico.

Q. That is not on the grant?

A. No; it is far from there.

Q. How long since you have seen the handwriting of Rafael Aragon?

A. I see it every day; it appears in the papers I have at my house.

Q. Where did Ventura Trujillo go when he left Ojo del Apache?

A. I believe he went to Tecolote or San Miguel. I am not quite sure.

Q. That is not on this grant, is it?

A. No.

Q. He lived at Tecolote until he died, did he?

A. At Tecolote or San Miguel. I do not know where he died.

Q. He never came back to this grant after he left it?

A. No.

93 Q. How many people are living in these boundaries you have mentioned now?

A. I see some farmers there.

Q. Any settlements on the grant now?

A. Antonio Salona and two or three neighbors of his and one or two Americans.

Q. Antonio Solano is living on this grant, is he?

A. He lives there, yes.

Q. He has a patent for the land from the Government, has he?

A. I do not know.

Q. Do you know Pablo Lucero?

A. Yes.

Q. He is living on this grant?

A. Yes.

Q. Do you know Antonio Lucero?

A. Yes.

Q. He lives in the grant?

A. No; they live at Los Chupaderos.

Q. How far is that from the boundaries of the grant?

A. About 2 miles and a half.

Q. From where?

A. From the Los Chupaderos.

Q. How far is it from the Ojo del Apache to the Los Chupaderos?

A. It is about five miles.
Q. Do you know Bonifacio Lucero?
A. I do not know him; he must be a young man.
Q. Do you know Francisco Lopez?
A. Yes; he is dead.
Q. Where did he live?
A. At Lagunitas.
Q. That is within this grant, is it?
A. It is outside of Ojo del Apache.
Q. Do you know Andres Lucero?
A. I do not know whether there is another Andres Lucero—yes, I know him; he is a musician.
Q. Where does he live?
A. He lived with the deceased Francisco Lopez; he used to live at Lagunitas.
Q. That is not on this grant, is it?
A. It is not within the boundaries of the Apache grant.
Q. Do you know Casamero Trembole?
A. Yes.
Q. He has lands right the-e near the Ojo del Apache?
A. He has a little ranch on the outside of the road of the Comanche traders, a little to the outside.
Q. Is it not on both sides of the road, or on one side?
A. I saw his ranch on the south side of the road and inside of the boundary of the Ojo del Apache; it is called Toupe.
94 Q. Who lives at this little town?
A. Some families—two or three families; their names are Montoyas.
Q. Mr. Trembole's ranch is at Ojo del Apache, is it?
A. I see the boundary on the outside of the road of the Comanche traders.
Q. Do you know a party named Domingo Hays?
A. Yes.
Q. Where does he live?
A. At La Apache.
Q. Is that at the spring?
A. Yes; at Ojo del Apache.
Q. That is within the grant, is it?
A. Yes; his house is at Ojo del Apache.
Q. Is he related to Mr. May Hayes?
A. Yes; he is related to him.
Q. How is he related to him?
A. I am not quite sure, but I think he is the son of his wife; he must be either nephew or son-in-law.
Q. Do you know Hubert Hilgres?
A. I may know him a little.
Q. Do you know where he lives?
A. I do not know.
Q. Where does he live?
A. He lives at Las Vegas or somewhere else.
Q. Has he lands at Ojo del Apache?

A. I do not know.

Q. He is related to Mr. Hays, is he?

A. He is related to him in the same way Domingo is. He and Domingo are brothers.

Q. Do you know a man named John C. Adlon?

A. I think not.

Q. Do you know Emma Adlon?

A. No.

Q. Do you know any lands around there claimed as the Adlon lands?

A. No; may be those Americans who live below; I do not know. A party of Americans live on the south of Ojo del Apache—one or two. There is a fence there and a windmill to get water with.

Q. Do they live north or south of the old road of the Comanche traders?

A. They live to the north of the road of the Comanche traders.

Q. They live inside of this grant?

A. Yes.

Q. They claim under the Government, don't they?

A. I do not know; it don't belong to the Government.

Q. Did you know Governor Armijo?

A. Yes.

Q. Did you ever see him?

A. Yes; on several occasions.

Q. You never saw any order that Governor Armijo ever made about this grant?

A. No.

Q. You do not know of your own knowledge whether he ever made any order about it, do you?

A. It is stated by everybody; I never saw it.

95 Q. Ventura Trujillo claimed that when you first knew him, did he?

A. Yes.

Q. He was the man that claimed to own this grant?

A. Yes.

Q. Did you get that impression from what Ventura Trujillo said to you?

A. Yes; and from what everybody said, and I saw him living there.

Q. That is all you know about what Governor Amijo did?

A. That is all I know about it.

Q. That is all.

Redirect examination by Mr. CATRON:

Q. When Bautista Lucero bought the grant from the heirs of Ventura Trujillo what did he do with it?

A. He sold it to Mr. Taylor.

Q. Between the time he bought it and when he sold it to Taylor what did he do with it?

A. He lived upon it; he built a house there.

Q. How did he occupy it and with what?

Mr. POPE: Object as leading.

A. He moved there with his family and enlarged the house built by Ventura Trujillo.

Q. What did he do by way of occupying it, keeping it?

A. He bought it.

Q. What use did he make of the property?

A. He sold it afterwards to Taylor.

Q. What use did he make of it while he lived there?

A. He lived there and planted the same places of land Trujillo had; he had goats and stock there.

Q. What did he do with his stock that he had there—how did he manage them?

A. I do not know.

Q. Did he keep them up or graze them out on the property?

A. Yes; he pastured them on the property.

Q. To what limits did he pasture them?

A. Within the property; it is very large.

Q. How close did he go out to the boundaries?

A. I saw him all the time within the boundaries.

Q. Always in one or different places?

A. On different points of the grant or different sites and in every direction, on every side.

Q. How many animals did he have?

A. I do not know.

Q. How long did he occupy the land from the time he purchased it until he turned it over to Taylor?

96 A. Nearly 9 or 10 years; maybe a little less. I do not remember.

Q. What was Taylor's first name?

A. I do not know. I knew him as Mr. Taylor.

Q. When he sold to Taylor what did Taylor do with the property?

A. He sold it to Mr. Hays.

Q. Before he sold it to Hays, what did he do with it?

A. He lived on it.

Q. How long did he live on the property before he sold it to Mr. Hays?

A. Nearly 9 or 10 years.

Q. What use did he make of it besides living on it?

A. He had stock; he had wagons and oxen; he had a trail of wagons.

Q. During the time Juan Bautista Lucero lived on the property and occupied it, did anybody else live on it and occupy it?

A. He was a relative of his. Francisco and Pablo was with him; he was also my uncle on my mother's side.

Q. Was there anybody else living on it and using it then?

A. I do not know.

Q. During the time that Mr. Taylor occupied and lived on the property did any one else besides Mr. Taylor occupy it?

A. No; those who lived on it left it.

Q. To what extent did Taylor occupy the property outside of the house right where he lived?

A. He had a great deal of stock.

Q. Where did he pasture his stock?

A. He pastured where Salona lives now; he pastured where these Americans live now and he pastured towards the mesa and everywhere.

Q. Did he pasture it all over the boundaries inside of the land or not?

A. I have seen his stock in all the grant.

Q. Do you know what year Mr. Taylor sold the property to Mr. Hays?

A. Yes.

Q. In what year?

A. I do not know, but Mr. Hays has been there for many years.

Q. After Taylor sold to Hays, what did Hays do with the property?

A. He lives on it now.

Q. What did Hays do with the property after he bought it?

A. I saw a great deal of his stock and sheep and I saw his horses and cattle and his furniture.

97 Q. When did his family first go there?

A. Since he bought from Mr. Taylor.

Q. When Mr. Hays bought where did Taylor move after that?

A. He has a house in Las Vegas.

Q. How has Mr. Hays occupied the property?

A. That way as having bought it from Mr. Taylor.

Q. After Juan Bautista Lucero bought from Ventura Trujillo how was the property regarded and respected as to ownership by the people generally?

Mr. POPE: Object as immaterial, irrelevant, and improper method of proving title.

A. It was regarded and respected as the property of Juan Bautista Lucero.

Q. After Lucero sold to Taylor and Taylor went to occupy it, how was the title respected?

A. With respect, a great deal more than as belonging to Mr. Taylor; sometimes he would not allow us to water there.

Q. After Taylor sold it to Hays how was it regarded and respected—the title?

A. As of Mr. Hays.

Q. That is all.

Cross-examination by Mr. POPE:

Q. How long is this grant from north to south—this tract of land?

A. I think it is about 6 miles and more along the mesa—must be about 7 or 8 miles.

Q. How long on the east boundary of this tract—its widest point from east to west?

A. It is about five miles at its widest point.

Q. The people that had cattle there used to graze them all around on the tract, didn't they?

A. Yes; from the mesa.

Q. The mesa is on the grant, is it?

A. It is the boundary of the grant; the boundary is on the top of the mesa.

Q. And these cattle used to graze both at the top of the mesa and on each side of the mesa and all around there over the grant?

A. I saw them pasture within the grant on the side of the mesa; it may be they went on top; I do not know.

Q. You have seen them on the top of the mesa?

A. I never saw them there.

Q. The people pastured their sheep and stock all around there without respect to whether they are on the grant, don't they?

A. I do not know. I used to go over there with my wagons, and I stopped and slept, and then I kept on.

98 Q. Those people at Lagunitas, how long have they been living there?

A. Since 1839. Damasio Salazar also gave them land.

Q. Is that within this grant?

A. No; it is outside of the Ojo del Apache grant.

Q. What people are inside of the Ojo del Apache grant?

A. Antonio Salona and two or three neighbors; some Americans who live below—I do not know them—and two or three families at Toupe.

Q. How long have those people been living there?

A. A great deal of time. Antonio Solano has lived there about 7 or 8 years.

Q. That is inside of the grant, is it?

A. Yes.

Q. Those people are not related to Mr. Hays, are they?

A. I believe not.

Q. They do not hold land by purchase from Mr. Hays, do they?

A. No; I believe not; I do not know.

Q. Some of them have been living there for a great many years, have they not?

A. About 7 or 8 years Solano has lived there.

Q. Others live there near, do they?

A. Yes; at Jouspa.

Q. That is inside of the grant, is it?

A. Yes.

Q. How long have they been living there?

A. They have lived there about 25 or 30 years.

Q. They do not claim that grant by purchase from Mr. Hays or any one else, do they?

A. I do not know how they claim.

Q. The people of Lagunita have been living there for a great many years?

A. Since 1839.
Q. Dionacio Salazar gave them their land, did he?
A. Yes.
Q. I believe you said that was the year before you knew Ventura Trujillo?
A. Yes.
Q. That is all.

ENCARNACION LOPEZ, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Catron, as follows:

Q. State your name, age, and residence.
A. My name is Encarnacion Lopez; I was born in 1828; I live at San Geronimo.
Q. Are you acquainted with the property called the Ojo del Apache grant?
A. Yes.
99 Q. How long have you known that property?
A. I know it since it was delivered to the deceased, Ventura Trujillo, in '42.
Q. Who delivered it to him?
A. Don Damasio Salazar, and Don Rafael Aragon, who was his secretary.
Q. Where were you when that was delivered to them?
A. I was at that place herding sheep.
Q. For whom?
A. Of my father, Don Manuel Pino.
Q. Did you or did you not see Damasio Salazar and Rafael Aragon and Ventura Trujillo at the time the property was delivered?

Mr. PORR: Object as leading.

A. Yes; they were at our camp then.
Q. What boundaries were delivered, if you know?
A. On that side, the north of the mesa, where there is a spring called Ojo del Ojito, at the point of the mesa towards the west where the sun rises; from the point of the mesa to the Lagunita, where there are some mesas on the other side of the arroyo to where the mesas join the road of the Comanche traders—that is, the boundary on the south.
Q. On the west where the sun sets?
A. The mesa of the valley of the Redondo on this side where the mouth of the cañon cito, where the road, the old road, joins.
Q. What was the boundary on the north side?
A. The point of the mesa of the Ojito Seco from the mesa to the valley of the Redondo.
Q. If you know or if it was stated at the time by them by what authority did Damasio Salazar deliver the possession?

Mr. PORR: Object as leading and suggests the answer.

A. By the order of General Arnijo to Damasio Salazar to deliver to him.

Q. How do you know that he gave that order?

A. Because that is stated. I did not see it myself.

Q. Who stated that he gave that order?

A. Don Rafael Aragon and Don Dionacio Salazar and the deceased, Ventura Trujillo; every one of them so stated.

Q. After the property was delivered to Don Ventura Trujillo what did Don Ventura Trujillo do with it?

A. He lived on that place while I was herding his sheep.

Q. How long did he live there, if you know?

100 A. I was with him five years and a little over.

Q. What did Ventura Trujillo have there on the property, if you know?

A. He had his stock, horses, goats; he planted on that place.

Q. How many goats did he have?

A. I do not know how many, but he had a large heard of goats; I do not know the number.

Q. How many horses did he have?

A. He had quite a number; about 15 or 20 horses; he was very fond of travelling.

Q. Had he any cows or cattle on that property?

A. When I was there I did not see any cattle.

Q. Where did he pasture these goats and horses?

A. Within his place.

Q. How far out towards the boundaries?

A. I do not know if his horses went outside of the boundaries or not.

Q. During the time that you were there and saw him occupy it, was there anybody else occupying or claiming any part of that property?

A. No.

Q. How was that property respected and regarded as to ownership by the people in that vicinity and neighborhood during that time that Ventura Trujillo was there and occupying it?

Mr. POPE: Object as hearsay.

A. It was respected as belonging to the deceased Ventura Trujillo.

Q. Who claimed to be the owner of the property?

Mr. POPE: Object for the same reasons.

A. Nobody; I never heard of anybody else.

Q. Did Ventura Trujillo claim it?

A. It was recognized as his.

Q. Did he claim it or not?

A. Yes; he possessed it.

Q. When you left there who was in the possession of the property?

A. He.

Q. Since you went away from there have you seen that property?

A. Yes; I went there afterwards.

Q. How soon afterwards was it that you went to the property the first time?

A. I do not remember very well, but 3 or 5 or 6 years; something like that.

Q. When you went back to the property who, if any one, was in possession of it?

A. I did not go to the house; I do not know whether his children or nephews, but some possessed it for a good deal of time afterwards.

Q. Do you know if anybody else after Ventura Trujillo succeeded to the possession of that property after Ventura Trujillo?

101 A. After he died I knew the people who lived on it.

Q. Who was there after his death?

A. Bautista Lucero and Crescencio Baca, deceased.

Q. Were you there while they were in the possession of the property?

A. I was there upon occasions at that house with them.

Q. What claim, if any, did they make to the property?

Mr. POPE: Object for the same reasons.

A. They said that they had bought from the heirs, but I do not know.

Q. They claimed the property by purchase?

Mr. POPE: Object as leading.

A. Yes; they recognized it as belonging to them by purchase.

Q. Now, what were they doing with the property when you were there?

A. I saw them in possession. They were living on it and they were planting there.

Q. Did they have any animals or stock?

A. They had a few goats. I did not see any other kind of stock.

Q. Did you go around over the property when you were back that time to see?

A. I went over to Las Vegas and on my return they had a house.

Q. Did you stop in that house?

A. Yes.

Q. You did not see what they had outside of the road at the house?

A. They had planted there then corn and beans and a garden and chili and onions and also canteloupes.

Q. Do you know how they occupied that portion of the property that was some distance from their house?

Mr. POPE: Object as leading and hearsay.

A. They said that they had bought from the heirs. I did not see that, but they said they had possession as coming from the heirs.

Q. Do you know how to read and write?
A. No.
Q. That is all.

Cross-examination by Mr. Pope:

Q. Where were you living at the time you were herding sheep on this property?
A. At that time I lived in the Cañon Jemez. After I delivered the sheep I came to live at Anton Chico.
Q. How did it happen you were herding sheep way over here?
102 A. Because the Navajos were very numerous and all the stock at that time were brought to this side. We herded wherever we could save our stock; we pastured them.
Q. That is the general custom among herders now, is it?
A. Yes; I believe so; there is danger of Indians, but they go wherever they can save their stock.
Q. Did you ever herd sheep there after that?
A. Yes; many times.
Q. Around the Ojo del Apache spring?
A. Yes; everywhere else he allowed us to pasture except right at the spring.
Q. On what part of this tract were you herding when these three men came out there?
A. Within that place, and also outside of it.
Q. Where were you herding on this grant with reference to the Apache spring when those three men came there in 1842?
A. I was inside of the place of the deceased, Ventura Trujillo.
Q. How far from the spring?
A. We were right at the edge of the spring or cojita.
Q. You did not see any of the papers these men had?
A. No; I did not; I was still a boy; I did not see them.
Q. You did not see any papers?
A. I did not see any papers; they had the papers with them; I did not see them; I saw the three of them.
Q. How did you know what the boundaries were; you did not go with them?
A. Because they stated the boundaries; because they said they were the boundaries; that is the reason that I know them.
Q. How did they come to state it?
A. Because Ventura Trujillo made a petition for a piece of land, and they said that they had an order from him to that effect.
Q. You did not go with them around these boundaries, did you?
A. No; they stated the lines that they had.
Q. Did they do anything else?
A. I do not know, but the lines are very well known.
Q. Did they do anything else when they came, these three men?
A. No; I did not see them do anything else.
Q. All you know about it is what they said?
A. Yes; I saw them there.

Redirect examination by Mr. CATRON:

Q. Do you know whether Damasio Salazar and Rafael
103 Aragon made any report to the governor after their action in delivering the possession?

Mr. POPE: We object, as it is improper, impertinent, irrelevant, incompetent, and hearsay; statements of what other people told him.

A. I understand that they had given him a list, but I did not see it myself.

Mr. POPE: We move to strike out that answer as to what was told him, and we also reserve the right to further cross-examine this witness if on investigation the Government considers it desirable.

JOSE BENITO MARTINEZ, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination by Mr. Catron, as follows:

Q. State your name, age, and residence.

A. My name is Jose Benito Martinez; I am 53 years old; I live at Anton Chico.

Q. Did you know Ventura Trujillo in his lifetime?

A. No.

Q. Did you know Juan Bautista Lucero?

A. Yes.

Q. Do you know the property in question here called the Ojo del Apache land grant or tract?

A. Yes.

Q. When did you first know that property?

A. In 1854.

Q. Who was in possession of it at that time, if any one, to your knowledge?

A. To my knowledge, the wife of Ventura Trujillo, deceased.

Q. How was she occupying it, if you know?

A. She had it loaned to Juan Bautista Lucero and to my uncle, Cresencio Baca.

Q. Was she there or were they there?

A. The widow of Ventura Trujillo, Juan Lucero, and Cresencio Baca were there.

Q. That was in 1854?

A. 1854 or 1855.

Q. How long did they stay on that property, if you know?

A. About 8 or 9 years, perhaps.

Q. Did they occupy the property long after they acquired title to it?

A. A man by the name of Lopez came to see the property by order of the woman.

Q. Where were these men living, Baca and Lucero, at that time?

A. At the Apache spring.

Mr. POPE: Object as leading and move to strike it out.

Q. While they were there did they occupy it 8 or 9 years as their property or as the property of the widow?

104 A. In about 1855 this Isidro Lopez went there to see some stock that they had there. I was then herding goats there with my uncle Cresencio and a brother of mine was cutting timber in the canoncito. Then this Isidro came and my uncle Cresencio told him that the boy was cutting timber there. Then Isidro told me to go and tell my father not to cut timber there. I went at night and came back the next day and I told him that my father said that the timber was already cut and wanted to know what he should do with it. Isidro said to bring the timber and cut no more. That is the way I came to know that it belonged to that woman.

Mr. POPE: We object to this as being incompetent and hearsay.

Q. Now, where was the place this timber was cut—within or without this grant?

A. It was within this grant.

Q. Who did they claim that grant belonged to at that time?

Mr. POPE: Object as leading.

A. To Ventura Trujillo, deceased.

Q. Was his widow living at that time?

A. Yes.

Q. Where was she?

A. She was at her house; I do not know whether at San Miguel or Tecolote.

Q. Who were these two people that were there in possession at that time?

A. Cresencio, my uncle, and Juan Bautista Lucero.

Q. What was your uncle's other name?

A. Cresencio Baca.

Q. Who was Isidro Lopesz, the man you have mentioned?

A. He was son-in-law of Ventura Trujillo, deceased, and son of that woman.

Q. Did you ever see the property after that time?

A. All the time from the year '54 until now.

Q. Did Juan Bautista Lucero and Cresencio Baca at any time cultivate that property as their own, to your knowledge?

A. They bought it in the year '65.

Q. In what year did they buy it?

A. '65.

Q. Who did they buy it from?

A. In the year '55.

Mr. POPE: We object, as it is not the best evidence.

Q. From whom did they buy it?

A. They bought it from Juna Lopez, a son of that woman.

Q. After they bought it how long did they remain in possession of it?

A. About 8 or 9 years.

Q. How did they occupy it?

A. My uncle Cresencio had a little store there.

105 Q. Did they live there?

A. They had some planting done there and gardens and orchards.

Q. Did they or not live on it?

A. They lived there; also their families.

Mr. POPE: Object as leading.

Q. Had they any animals or live stock?

A. No; they did not have any stock. My uncle Cresencio had a few goats there.

Q. Who succeeded them in possession of the property, if you know?

A. Mr. Taylor.

Q. What was his first name, if you know?

A. John Taylor.

Q. How did he occupy the property?

A. He bought it from Juan Bautista Lucero.

Q. How long did he occupy it and in what manner did he use it, Mr. Taylor?

A. He had a station there. He had wagons. He was using it as a station.

Q. Did he have any animals or live stock there?

A. He had wagons and cattle and horses and oxen.

Q. Where did he pasture them?

A. Within the same place.

Q. During the time that Juan Bautista Lucero and Cresencio Baca occupied the property how was it regarded and respected by the people generally in that locality as to ownership?

Mr. POPE: Object as immaterial and hearsay.

A. They were recognized and respected as the owners of the land.

Q. After Mr. Taylor bought it and went into possession and occupied it, how was it regarded by the people in that locality?

Mr. POPE: Same objections.

A. They respected the same way as belonging to Mr. Taylor.

Q. That is all.

Cross-examination by Mr. POPE:

Q. Does Mr. Taylor claim the whole of this tract of land that you have described, or only a ranch on the inside?

A. He claims all of the land.

Q. Are you interested in this grant?

A. No, sir; I never was. I only have worked in their house.

Q. Wo-ked for whom?

A. Mr. Taylor.

Q. Have you worked for the plaintiff in t-is case, Mr. Hays?

A. No; I sheared down sheep for him at one time. That is all I worked for him.

106 Q. You have herded sheep for him occasionally?
A. Never.
Q. You sheared sheep for him occasionally?
A. I used to work in the house.
Q. Have you sheared sheep for Mr. Hays occasionally?
A. Yes, sir; sheep and goats.
Q. That is all.

Mr. CATRON: That is all.

ENCARNACIO N. LOPEZ recalled for further cross-examination by Mr. Pope:

Q. Do you claim any interest in this grant?
A. No, sir.
Q. How far do you live from the Ojo del Apache now?
A. I live far; I live at the valley of San Geronimo.
Q. How many miles is that?
A. I do not know how many miles it is. It is far.
Q. Are you related to Mr. Hays or his wife of any of his family?
A. No, sir.

August 24th, 1896.—The further hearing of the testimony of witnesses in the above-entitled cause was resumed before Fuller, A. J., and the same attorneys present.

FRANCISCO TRUJILLO, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified on direct examination by Mr. Catron as follows:

Q. State your name, age, and residence.
A. My name is Francisco Trujillo; I was born in the year '20; I reside at Valle de San Geronimo, San Miguel county, New Mexico.
Q. In what month, if you know, were you born in 1820?
A. I was very young and I do not know what time.
Q. Are you acquainted with the tract of land in the county of San Miguel, in this Territory, known as the Ojo del Apache tract?
A. Yes.
Q. How long have you known that tract of land?
A. I have known it since the year '30, when my father, Ventura Trujillo, was living on it?
Q. Were you acquainted with Ventura Trujillo?
A. He was my father.
Q. Do you know anything about a grant being made of that tract of land to your father, Ventura Trujillo, about the year '40 or '42?
A. Yes.
Q. State what you know about it.
A. I know about that that my father, Ventura Trujillo, had brought a very rich woman from the Comanches.
Q. Well, now, go on and state what you know about it.
107 A. And then after that the Mexican government made this grant to my father, and then there was an order signed by the government with a man to go and deliver the land to my father.

Q. Do you know who signed that order?
A. Yes.
Q. Who?
A. This order was signed by General Armijo and declared Damasio Salazar to go and deliver the land.
Q. What year was the land delivered?
A. The land was delivered in the year '42.
Q. By whom?
A. It was delivered by Don Damasio Salazar and Don Rafael Aragon, his secretary; at the time I was very young then.
Q. Were you acquainted with Damasio Salazar?
A. Yes, I knew him.
Q. You say that Rafael Aragon was his secretary?
A. He was his secretary.
Q. In what capacity?
A. He was his secretary, so they said; I was never in his court.
Q. You were present at the time the delivery was made?
A. Yes, I was there; when the land was delivered to my father a communication was signed stating that it had been delivered.
Q. Who signed that communication?
A. Don Damasio Salazar.
Q. At the time the land was delivered who was present, if you know?
A. My brothers and my father.
Q. Rafael Aragon there?
A. Yes.
Q. Damasio Salazar?
A. Yes.
Q. Did you know Salvador Gonzales?
A. No.
Q. Do you know how to read and write?
A. No.
Q. What were the boundaries which were delivered of the possession of that land?
A. The point of the Mesa de los Salonas, as it is called, to the mesa alto of the Lagunita; from there to the Polvaredo del Valles Redondo; from that point to the canoncito that empties out into the Lagunita; the old road of the Comanche traders to the Mesa de los Chupaderos.
Q. Do you know what is called the Apache spring?
A. Yes.
Q. Where is that in regard to this property, within or without it?
A. What property?
Q. This grant which was delivered to your father by Damasio Salazar.
108 A. It is outside of the grant.
Q. You say the Apache spring is outside of the grant?
A. Yes.
Q. What do you mean by saying it is outside of the grant?
A. I think it is three miles from the grant.
Q. Is it within the boundaries you have mentioned or not?

Mr. POPE: We object on the ground that the witness has already answered the question and he is cross-examining his own witness.

A. It is within the boundaries.
Q. Do you know where the Ojo del Apache is?
A. Yes; I know it because we had a farm there.
Q. Where did your father reside at the time the grant was made to him?
A. In San Miguel.
Q. Did he ever reside in the grant?

Mr. POPE: We object on the ground that it is leading, and move to strike it out.

A. Yes.
Q. How soon after Damasio Salazar delivered the grant did your father go there to live?

Mr. POPE: We object, as it is leading and suggestive of the answer. He is assuming a state of facts that has not been proven.

A. We lived there about thirty years.
Q. From what time to what time did you live there?
A. I do not know the time that we stayed there, because the Indians drove us away; but my brothers went there to the property.
Q. Is your father living or dead?
A. He is dead.
Q. Where was your father living at the time of his death?
A. In San Miguel.
Q. Where was your mother living when your father died?
A. In San Miguel.
Q. When was it that your father lived on this grant?
A. Prior to his death.
Q. How many years before his death?
A. I have stated that about thirty years.
Q. How long before he died did he go to San Miguel to live?
109 A. I have said that he lived there since he was born.
Q. When did he live on this property?
A. He lived there in the year '42.
Q. How many years after the year '42 did he live there?

Mr. POPE: We object as leading. He has stated already that.

A. We lived there since the grant was made. We transported ourselves immediately there.
Q. You mean to say that as soon as the grant was made you went to Ojo del Apache to live?

Mr. POPE: Object as leading and suggestive of the answer.

A. Yes.
Q. How many years did you stay there after you went there?
A. We stayed there about thirty years.
Q. In what year did your father die?
A. I do not remember; I was very young.

Q. How many years after this grant was made? Was it until your father died?

A. About ten years.

Q. Wh-n your father died who, id any one, was in the possession of this grant?

A. One of my brothers.

Q. What was his name?

A, Isidro Lopez.

Q. In what manner did your father possess the property? How did he occupy it?

A. He had mares and he had a little farm, and he had goats and he made a planting there also.

Q. At what point in the grant was this planting?

A. Near the spring.

Q. The Apache spring?

A. Yes.

Q. Where were these lands that he was cultivating?

A. A little below the Apache spring.

Q. How close to the spring?

A. About 15 yards.

Q. Do you know any mesa that lies to the north of the Ojo del Apache spring?

A. Yes.

Q. State whether or not that is one of the boundaries which was given by Dionacio Salazar?

Mr. POPE: Object as le-ding and suggestive of the answer.

A. That is the mesa alto, as it is called.

Q. Do you know a road on the south of the Apache spring known as the old road to Chupinas?

A. Yes.

Q. Do you know whether or not that road was one of the boundaries which was pointed out by Damasio Salazar?

A. Yes.

Q. Do you know a mesa on the east of the Apache spring called the mesa of Chupinas?

A. Yes.

Q. Do you know whether that was one of the boundaries which was pointed out by Salazar?

Mr. POPE: Object as leading.

A. Yes.

Q. Do you know some hills which border on the Cañon de la Lagunita lying to the west of the Apache spring?

A. Yes.

Q. On the west of the Apache springs?

A. Yes.

Q. State whether or not that was pointed out by Salazar as one of the boundaries of the grant.

Mr. POPE: Object for the same reasons.

A. Yes.

Q. After your father's death you say your brother remained in the possession of the property?

A. Yes.

Q. How long did he stay in possession of the property after your father's death?

A. We remained there about three years.

Q. Were you with him?

A. Yes.

Q. How did you and your brother occupy the property after your father's death?

A. By farming it and with stock.

Q. How many animals had your father on this property from the time Salazar gave him possession of it up to the time of his death?

A. He had about 30 horses, 60 goats, and 6 cows.

Q. Where did he pasture these animals?

A. From the Ojo del Apache towards the hills.

Q. In every direction?

A. In every direction.

Q. How did he pasture them with reference to the boundaries of the grant?

A. Within the boundaries.

Q. How close to the boundaries?

A. The boundaries were very far from the place where he pastured.

Q. Did the animals go out at any times towards the boundaries?

Mr. POPE: Object as leading.

111 A. No; they were all shepherded.

Q. Did the shepherd drive them wherever he wanted to, or did he drive them within any particular place?

A. He drove them wherever he wanted to.

Q. Do you know how this property was repsected and regarded as to ownership after Damasio Salazar gave possession of it to your father as to whom it belonged by the people generally?

A. Yes.

Q. How was it respected, as the property of whom?

A. After my father died it was the property of my brother.

Q. During your father's lifetime as whose property?

A. As my father's.

Q. What became of the property after you and your brother ceased to occupy it?

A. We kept watching it, and we kept going there to live after it went to my brothers.

Q. What did you do with it finally?

A. We again went to live there.

Q. In what year?

A. I do not remember.

Q. How long did you live there that time?

A. We lived there about 14 years.

Q. Who succeeded you in the property, if any one?

A. My brother Isidro, and then it was sold to Luis Sulzbacher.

Q. Did you know Juan Bautista Lucero?
A. Yes.
Q. Did you know Cresencio Baca?
A. Yes.
Q. State whether or not they ever occupied the property.
A. Yes.
Q. From whom did they obtain possession of the property?
A. I think from a brother of ours; I think he had sold to them.
Q. How long did they occupy it?
A. I do not know how long they occupied it; they lived there a long time.
Q. How did they occupy it?
A. They had a farm and animals.
Q. At what particular place did they reside?
A. At the spring itself they had houses there near the springs.
Q. Did they or did they not reside there?
A. Yes.
Q. Had they families?
A. Yes.
Q. You say your brother sold the property; did he sell for all the children or only for himself?

Mr. POPE: Object as it — not the best evidence.

A. He sold it for himself.
112 Q. State whether or not the balance of the children afterwards recognized the sale.

Mr. POPE: Object as leading.

A. Yes.
Q. Do you claim any interest in the property now?
A. Yes.
Q. You claim an interest in the property, or has your interest been sold?
A. No, sir; it has not been sold.
Q. When your brother sold did he sell as representing your mother and the other children?

Mr. POPE: Object, as he says it was sold for himself.

A. No.
Q. Did you see the document that he made?
A. I did not see it.
Q. You approved of whatever he did, did you?

Mr. POPE: Object as leading, and the witness has answered the question.

A. No.
Q. Did you dis-prove it?
A. Yes.
Q. How?

Mr. POPE: We object, as he is cross-examining his own witness.

A. Because he went to sell it without the consent of my mother and the other heirs.

Q. After he sold it to Don Juan Lucero did Lucero take possession of it?

Mr. POPE: Object as leading.

A. Yes.

Q. Did you move away from the property then?

A. Yes.

Q. And your brother went away?

A. Also.

Q. You have never occupied the property since that time?

Mr. POPE: Object, as it is leading.

A. No.

Q. Have you ever commenced any proceeding in court for the possession of the property?

Mr. POPE: Object as immaterial.

A. Yes.

Q. Where?

A. No; I have not myself; I had never been in court before until now.

113 Q. When you moved away from the property after the sale by your brother to Juan Bautista Lucero you recognized that the sale was proper, did you not?

Mr. POPE: Object, as it is leading and suggestive of the answer, and he is cross-examining his own witness and telling him what to say.

A. Yes.

Q. You moved away from the property because you recognized that Juan Bautista Lucero had become the owner of it?

Mr. POPE: Object on the same grounds as last recited.

A. Yes.

Q. After Juan Bautista Lucero was occupying the property you recognized him as the owner of it, did you?

Mr. POPE: Object on the same grounds last stated.

A. Yes.

Q. Do you know to whom Juan Bautista Lucero disposed of the property?

A. I di not.

Q. Do you know John L. Taylor?

A. Yes.

Q. State wherher or not he ever occupied this property.

A. Yes; he occupied it.

Q. Whom did he get it from?

A. I do not remember.

Q. How did he obtain the possession of the property?

A. From this man Juan Lucero, who sold it to him.

Q. Did Juan Lucero turn it over to Taylor?
A. Yes.
Q. How long did Taylor occupy it?
A. I think about five years.
Q. How did he occupy it?
A. He lived there. He was taking some lumber to Redondo.
Q. Lumber from what property?
A. He was taking some lumber to the fort.
Q. Where did he get the lumber?
A. From above the Mesa del Apache.
Q. Within this property or outside of it?
A. Outside of the property.
Q. You say he lived within the property?

Mr. POPE: Object as leading.

A. Yes.
Q. What else did he do inside of the property besides living there, if anything?
A. He had some sheep there.
114 Q. Have any cultivated lands?
A. I do not know.
Q. How many sheep had he?
A. He might have had a thousand sheep.
Q. Where did he pasture them?
A. Upon the same land; he would not go beyond the same land.
Q. Do you mean within the boundaries you have mentioned?
A. Yes.
Q. Who succeeded Mr. Taylor in the possession of the property?
A. After that I saw Mr. Hays there.
Q. The present claimant of the property?
A. Yes.
Q How long has Mr. Hays occupied it, if you know?
A. I do not know how long.
Q. State, if you know, if Taylor, while he was occupying the property, claimed to be the owner of it.

Mr. POPE: Object as leading and immaterial.

A. Yes.
Q. Do you know whether Juan Bautista Lucero claimed to be the owner of it while he occupied it?

Mr. POPE: Same objections.

A. Yes.
Q. In what year was it that you and your brother left the property and turned it over to Juan Bautista Lucero?
A. I do not remember in what year.
Q. How many years ago?
A. It is 30 years ago, about.
Q. That is all.

Cross-examination by Mr. POPE:

Q. You say the Indians drove you away; what year was that?
A. I do not know; it was a long time ago.
Q. Who was on the land when the Indians drove you away?
A. My brothers and myself.
Q. How long did you stay away?
A. We stayed away *a* about a year without coming back.
Q. Was that after your father's death or before?
A. No; my father he died already.
Q. How many varas of land did your father cultivate?
A. About a hundred varas.
Q. That was all the land your father cultivated while he lived there, was it?
A. Yes; that was all.
115 Q. How much land did you and your brothers cultivate when you were there?
A. I say that we cultivated about a hundred varas.
Q. Never cultivated any more while you stayed there?
A. No.
Q. How many varas did Juan Bautista Lucero cultivate?
A. I do not know.
Q. Did he cultivate as much as you and your brother cultivated, or more?
A. *I* little more.
Q. About a hundred varas more?
A. Yes.
Q. He did not cultivate two hundred varas, did he?
A. Yes.
Q. How much more?
A. I guess about 250 varas.
Q. Was that right near the house where he lived?
A. Yes.
Q. He did not cultivate any other land on that tract, did he?
A. No.
Q. Your father did not cultivate any land on that tract except what you have stated?
A. Only that.
Q. You and your brother did not cultivate any more land except what you have stated?
A. No.
Q. The flocks you have mentioned, they were pastured around the spring, were they?
A. Yes.
Q. They pastured for some distance off from the spring, did they?
A. Yes; my father had ordered that they should not drive the flocks over the spring.
Q. You pastured them all around the grant wherever you could get the best pasture, did you?
A. Yes.

Q. It did not matter whether you went up on the mesa or whether you pastured all around the mesa?

A. Yes.

Q. Nobody objected to your pasturing your flocks wherever you could find pasture all around there?

A. No.

Q. You did not have to stay inside of the grant to pasture?

A. No.

Q. And you did not pasture outside of the grant?

A. Yes; sometimes when the horses would go out.

Q. And the same way with the goats, was it?

A. Yes.

Q. And the same way with the cows, was it?

A. Yes.

Q. You say you first knew this tract of land in 1830?

A. Yes.

Q. Who was living on it then?

A. Ourselves.

Q. You were living on it then?

A. Yes.

116 Q. Was that the same time that possession was delivered?

A. No; it was given in '42.

Q. You lived on it quite a number of years before possession was given?

A. Yes.

Q. You pastured your flocks on it then, did you?

A. Yes.

Q. How many of your brothers went with your father when this possession was given that you have been talking about?

A. Five of us.

Q. You say Salvador Gonzales was not with you?

A. No.

Q. He was not with you?

A. No.

Q. Before your father got possession from 1830 on he cultivated this land as well as pastured his flocks on it, did he?

A. Yes.

Q. You did not know anything about any order from General Armijo except what your father told you, do you?

A. Yes.

Q. That is all you know about it?

A. That is all I know.

Q. Who else was present except your five brothers when this land was delivered?

A. There was nobody else; my father was there.

Q. Damasio Salazar there?

A. Damasio Salazar and his secretary was there.

Q. Anybody else?

A. Yes; these were the only ones.

Q. These ones that you have mentioned were the only ones that were there?

A. Yes.
Q. That is all.

Redirect examination by Mr. CATRON:

Q. Did you hear Damasio Salazar say that he had an order from the governor?

Mr. POPE: Object as leading and suggestive of the answer.
The COURT: We will pass upon it when we come to it.

Q. State whether you heard Damasio Salazar say that he had an order from the governor at that time to deliver the possession of the grant.

Mr. POPE: Object as suggestive of the answer.

Q. What did he say in respect to an order from the governor?

Mr. POPE: Object as hearsay. It is not proper redirect examination.

A. That the order was to deliver the land to my father, and Damasio Salazar sent a communication to General Armijo stating that the land had been delivered.

117 Mr. POPE: Object for the reasons stated and move to strike it out.

Q. That is all.

Mr. POPE:

Q. All you know about a communication being sent to Governor Armijo was what your father told you, is it?
A. Yes.

Mr. CATRON:

Q. Did Damasio Salazar also tell you?

Mr. POPE: Object as leading.

A. Also, the same.

Mr. POPE:

Q. And that is all you know about it?
A. Yes.

Mr. CATRON:

Q. You have been acquainted with Mr. Sulzbacher?
A. Yes.
Q. State whether or not you conveyed your interest in this property to him.

Mr. POPE: Object as improper.

A. Yes; to Luis Sulzbacher.

Mr. POPE:

Q. You still claim an interest in this grant, do you?
A. Yes.
Q. That is all.

Mr. CATRON: That is all.

August 26th, 1896, the following further testimony was taken before Fuller, A. J., at the same place and same attorneys present:

MAY HAYS, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified, upon direct examination by Mr. Catron, as follows:

Q. State your name, age and residence?
A. My name is May Hays.
Q. Are you the claimant in this Ojo del Apache grant?
A. Yes.
Q. How long have you known the property you are claiming?
A. 25 or 30 years.
Q. Did you know Ventura Trujillo?
A. No.
Q. Do you know any of his children?
A. Yes.
Q. State what ones of them you knew if you can remember.
A. I cannot remember the names of only Francisco; but I got a list of the names.
Q. Did you know one by the name of Guadalupe?
A. I think I recollect him.
Q. Do you know Damasio Trujillo?
A. Yes.
Q. Was he a son of Ventura Trujillo?
A. Yes; a son.
Q. How do you know; did he ever tell you?
A. Yes.
Q. Is he living or dead?
A. Dead.
118 Q. Did you know Francisco Trujillo?
A. Yes.
Q. Isidro Lopes; did you know him?
A. Yes.
Q. Do you know what relation Isidro Lopes was to Ventura Trujillo?
A. Son-in-law.
Q. Did you ever have a conversation with him as to the relationship of his wife to Ventura Trujillo?
A. No, not particularly; he was a son-in-law.
Q. Do you know whether Ventura Trujillo is living or dead?
A. He is dead.
Q. Did you know Juan Catarino Romero?
A. Yes.

Q. Do you know whether he is any relation of Ventura Trujillo?

A. By marriage; son-in-law.

Q. How do you know he was a son-in-law?

A. I talked with him.

Q. Do you know whether he is living or dead?

A. He is dead.

Q. Who occupied this property, if any one, when you first knew it?

A. When I first knew it Juan Bautista Lucero occupied it.

Q. Do you know what were the boundaries of the land as he occupied it?

A. Yes.

Q. State them.

A. Starting at a high point of the Ojo del Seco and running to a certain Lake Lagunitas; from there it turns around across the hills and across a box cañon to the road known as the Comanche road.

Q. What was the boundary on the north side?

A. On the north side the mesa of the Apache.

Q. Is that the first or second mesa, or is there any other mesa known as the Mesa del Apache?

A. It is the first one.

Q. What is the boundary on the east side?

A. On the east side the Chupinas mesa.

Q. Is it the first mesa east of the Apache spring?

A. It is the first mesa east of the Apache spring.

Q. What is the boundary on the south side?

A. The road.

Q. What is that road called?

A. The Comanche road.

Q. What direction is that road from the Apache springs?

A. South.

Q. What is the boundary on the west side?

A. On the west side the Chupaderos or Lagunitas.

Q. What direction is that from the Apache spring?

A. That is west.

Q. Now, when you first knew Juna Bautista Lucero as oc-
119 cupying this property, how was he ocupying it; in what manner?

A. He was cultivating and had a small body of stock.

Q. Do you know what claim, if any, he made in regard to the land; if so, what was it?

Mr. POPE: Object as immaterial, irrelevant, and incompetent and hearsay.

Q. He claimed it through the widow; he married the widow of Trujillo.

Q. Did he claim it as his own or hold it for somebody else?

A. He claimed it as his own property.

Q. The property that is within these boundaries you have mentioned?

A. Yes.

Q. Now, how long did he occupy it, to your knowledge?
A. He occupied it about 5 or 6 years.
Q. And who succeeded him in the occupation of it?
A. Mr. John L. Taylor.
Q. How did Mr. Taylor occupy it?
A. He occupied it by living on it and raising stock; grazed stock on it.
Q. To what extent did he graze stock on it?
A. Well, pretty much all over it; he had a herd of sheep; he had a lot of oxen and some stock cattle.
Q. What claim, if any, did he make to the property?
A. He claimed the whole boundaries, as I have mentioned, as his property.
Q. How long did he remain in possession of it?
A. I cannot recollect exactly; it was about 10 years.
Q. Who succeeded Mr. Taylor in the possession of the property?
A. I did.
Q. How long have you had possession of it?
A. I had possession, as well as I can recollect, since '76, the latter part of '76, or the fore part of '77; I cannot recollect which year.
Q. How have you occupied it?
A. By grazing stock and living on it.
Q. To what extent have you grazed stock on it?
A. I have grazed my stock all over it.
Q. What claim, if any, do you make to the property while you have had it in your possession, as to whether or not it was your property?
A. I hold it as my property by purchase from Mr. Taylor and claim just the same limits as he claimed.
Q. Did you purchase from Taylor?
A. I purchased from Taylor and Luis Sulzbacher.
120 Q. That is all.

Cross-examination by Mr. POPE:

Q. How much land did Juan Bautista Lucero cultivate?
A. Well, I suppose two or three acres.
Q. Right at the spring?
A. Right at the spring; cultivated some little close to the house.
Q. But he did not cultivate over two or three acres altogether?
A. Yes.
Q. Was there any fence around it?
A. No fence.
Q. The stock that he had grazed both in and outside of these boundaries?
A. Yes.
Q. Grazed all over the boundaries?
A. Inside and sometimes outside.
Q. Mr. Taylor, how much did he cultivate?
A. He did not cultivate any; he had a garden spot of about an acre.

Q. Right there by the spring?
A. No; it was about something near a mile from the spring.
Q. That is all he cultivated?
A. Yes.
Q. His stock grazed both inside and outside?
A. Yes.
Q. How much do you cultivate?
A. I cultivate this garden spot; that is all.
Q. You live there?
A. Yes; I live there.
Q. Your stock graze just like his stock did?
A. Yes.
Q. Quite a number of people there claiming under the Government?
A. No; there is not many, three or four families or five families.
Q. Inside of the limits of this track you have mentioned?
A. Yes.
Q. Well, do they cultivate any?
A. Yes; small spots.
Q. Have any stock?
A. They have some little stock.
Q. Where does their stock graze; just where your stock graze?
A. Just as my stock graze.
Q. Are their ranches near the spring or farther south?
A. There is one party south and another southwest; there is two brothers, Americans, that live south of the spring.
Q. How far from your place?
A. It is about a mile and a quarter or half to their houses.
Q. What are their names?
A. Adlons.
121 Q. Any one else that lives there on this tract of land under the Government?
A. This man named Solano and two or three families that I do not know their names.
Q. How far do they live from you?
A. They live about two miles.
Q. Do they plant and have heards just like the others?
A. They have herds and plant some little.
Q. Who else is living on the grant?
A. A couple—three men named Montoyas.
Q. They are claiming under the Government, too?
A. They claim under—well, I can't say.
Q. But they don't claim under your title?
A. No.
Q. How far are they from the spring?
A. Two or three miles from the spring.
Q. Inside of the grant?
A. Inside of the grant.
Q. Who else, if anybody?
A. Two men and their families, but I do not recollect their names; but they have only been there a year or so.

Q. They cultivate, do they?

A. I see they have some land broke up this season. I do not know that they cultivate any; they broke up some land this season. I do not know if they planted any.

Q. How far are they from you?

A. About three miles.

Q. Some of these parties have been living there for quite a number of years?

A. Yes; those parties of Montoyas have been living there, I suppose, for thirty or forty years.

Q. Living there before you went there?

A. Yes.

Q. Some of these other people have been living there for some time, have they?

A. 8, 10 to 12 years.

Q. That is all.

Mr. CATRON:

Q. None except the Montoyas have lived there for more than ten to twenty years?

A. No.

Q. You say you do not know how the Montoyas claim?

A. No.

Q. That is all.

Mr. POPE: That is all.

122 I hereby certify that the above and foregoing thirty-seven pages contain a full, true, and correct transcript of the testimony of the above-named witnesses taken in said cause.

Santa Fé, New Mexico, September 23rd, 1896.

W. J. McPHERSON,
Official Stenographer.

122a EXHIBIT "C."

VENTURA TRUJILLO, Deceased. Apache Spring Tract.

JUAN BAUTISTA LUCERO, being by the surveyor general duly sworn, on his oath declares:

By JOHN S. WATTS, attorney for present claimant:

Question. What is your name, age, and residence?

Answer. My name is Juan Bautista Lucero; my age is sixty-two years, and I reside at Anton Chico.

Q. Do you know the Apache Spring tract of land? If so, please state how long you have known it and where it is situated.

A. I know the tract mentioned and have known it more than twenty years, and it lies in the county of San Miguel, in this Territory, about six miles north of the town of Anton Chico, and I think about fifteen miles south of the town of Las Vegas.

Q. State, if you know, who first went to the Apache Spring place to occupy and cultivate it.

A. It was Ventura Trujillo, now deceased. When I first knew Trujillo he was living at the place, which was, perhaps, about the year 1855. I do not know how long he lived there, but it was a considerable time. He moved away from there and died at the town of San Miguel.

Q. When Trujillo died who went to the place to reside, if any one?

A. I did. Trujillo having died, I purchased the place from his heirs, and I occupied the place four or five years, when I sold out the place to John L. Taylor, who, so far as I know, had no partner in the purchase, and thenceforward it has been occupied by Mr. Taylor and his friend or partner, Mr. Henry—that is, I knew him only by the name of Henry. Mr. Taylor is now occupying the place.

Q. Is the paper marked Exhibit B, the deed you executed to Taylor when you sold him the property?

A. I cannot read, but upon looking at the paper mentioned I am of opinion it is the same.

Q. Have you any interest in this property now?

A. I have none now.

Question by the SURVEYOR GENERAL. When did you purchase the property from the heirs of Trujillo and go into possession of it?

A. I do not remember, but the deed will show. I took possession the year after the date of the deed. I paid the heirs twelve
123 dollars for the land.

Q. How much did you sell the land for and have you been paid in full for it?

A. I sold the land for one hundred dollars cash and fifteen head of cattle to Mr. Taylor and have been paid in full by him.

Q. Do you know how much land the tract of the Apache spring contains?

A. I do not know.

Q. Do you know the boundaries? And, if so, state them.

A. I do know them. They are on the north the point of the mesa, on the east the mesa or table-land, on the south the old road of the Comanche traders, and on the west the hills adjoining the little cañon of the Lagunitas. The tract contains both grazing and cultivable land. The tract does not to my knowledge contain any mines, minerals, or coal.

Q. State, if you can, the cause of Trujillo's moving away from the place.

A. He moved away on account of the hostilities of the Indians, who were at that time very bad.

his
JUAN B. LUCERO. x
mark.

Sworn to and subscribed before me this Dec. 2, 1872.

JAMES K. PROUDFIT,
Surveyor General.

124 VENTURA TRUJILLO, Deceased. Ojo del Apache Tract.

Supplementary Testimony.

RAFAEL ARAGON, being by the surveyor general duly sworn to depose in this case, on his oath declares:

Question by Mr. WALDO, attorney for claimant, John L. Taylor. What is your name, age, occupation, and place of residence?

Answer. My name is Rafael Aragon; my age is seventy-seven years; my occupation is laborer, and my place of residence is Puerto de Luna, in the county of San Miguel. I was born here at Santa Fé, and moved to the section of country I now reside in in the year 1828, and have thenceforward lived there.

Q. Are you acquainted with the tract of land in that county known as the Ojo del Apache tract? And, if so, state where it is situated and what are the boundaries.

A. I know such a tract and its boundaries are: On the N. and E. the Mesa de la Chupaines; on the S. the old road always known as the Comanche Country road, which runs by the point of the Chupaines mesa; on the W. the hills which adjoin the Cañoncito.

Q. State all you know concerning the claim here in question, particularly as to when, by whom, to whom, and how the grant was made.

A. The grant was made to Ventura Trujillo and his children in the year 1841 by the alcalde, Damasio Salazar. I myself wrote the granting document and was at the time the secretary of said Alcalde Salazar. The grant was made under and in virtue of an order from the governor. The order referred to was a written one addressed to said Alcalde Salazar through Guadalupe Miranda, secretary of state of the government, and was of about this tenor, to wit: I am directed by his excellency the governor to say to you that upon the receipt hereof you will proceed to the place called the Ojito del Apache and will there place the petitioner, Ventura Trujillo, in possession of that land. Salazar was addressed in this communication as the alcalde of the second demarcation of San Miguel, and the communication was deposited among the archives of the alcalde's office. The directions of the order were carried out by the alcalde by placing Trujillo in possession of the land, and the alcalde then reported to Secretary Miranda that the governor's order had been duly executed. Salazar went upon the spot in company with
125 Trujillo and placed the latter in possession by pointing out and designating to him the boundaries of the tract. Trujillo went upon the land to occupy it, I think, in July, 1842. He occupied the place four years, having built upon it a small house, constructed some small tanks, and planted some ground. He was succeeded on the place by Juan Lucero, he by Jesus Casados, and he by John L. Taylor, here present.

Question by the SURVEYOR GENERAL. Who was governor when this grant was made?

Answer. Manuel Armijo.

Q. Did you ever know a man named Salvador Gonzales? If so, where, and is he now living?

A. I knew such a person and he is now dead.

Q. Is Damasio Salazar living?

A. He is dead.

Q. Did you know personally Guadalupe Miranda and is he alive?

A. I did not know him personally. I understand he is alive and residing now at El Paso.

Q. Did you know personally Governor Manuel Armijo?

A. I knew him personally.

Q. What public positions, if any, have you held?

A. I have never held any office except that of secretary of alcalde.

(The surveyor general here presents to the witness the original grant paper in the case marked Exhibit A, which the witness identifies as having been written by himself and signed by himself as an attending witness.)

Q. Examine the paper marked Exhibit A and state whether it contains any allusion to the order you have mentioned as given by Governor Armijo.

A. I believe it contains none.

Q. Why, in writing the grant paper Exhibit A, did you not make some allusion therein to the order of the governor?

A. I presume it was omitted by mistake.

Q. When you wrote the document, Exhibit A, where was the governor's order?

A. It had been turned into the alcalde's office.

Q. Was Damasio Salazar an educated man and a man of business capacity?

A. He was not an educated man, but quite a business man. He could neither read nor write and could scarcely sign his name, and for that reason, as alcalde, had to have a secretary.

126 Q. Have you now or have you ever had any interest in the land now in question?

A. I have not now and never have had any interest in this claim.

RAFAEL ARAGON.

Sworn to and subscribed before me this 31st October, 1873.

JAMES K. PROUDFIT,
Surveyor General.

127 To Benjamin Stevens, deputy clerk, &c.:

Know ye that we, in confidence of your prudence and fidelity, have appointed you and by these presents do give to you full power and authority to examine and take the deposition of one Guadalupe Miranda in a proceeding now pending before me, surveyor general of New Mexico, supplementary to proceedings heretofore had before me in the matter of the private land claim reported as No. 72 for the Apache Spring tract, in San Miguel county, New Mexico.

Therefore we authorize and direct you that, whenever and wherever the said Guadalupe Miranda shall be brought before you, you examine him on his oath touching his knowledge of the existence of a grant of land situate in San Miguel county, New Mexico, the boundaries thereof if he knows them, when said grant was made, by whom made and to whom made, and all that he may know about said grant, and as to any interest which he now has or ever has had in said grant; and reduce said examination to writing and return the same, together with this commission, closed under your seal, to this office with all convenient speed.

Dated Nov. 1st, 1873.

JAMES K. PROUDFIT,
Surveyor General of New Mexico.

GUADALUPE MIRANDA, having been first duly sworn by me, testifies as follows, to wit:

My name is Guadalupe Miranda. I am sixty-three years old. I now live in El Paso, Mexico. I was secretary of the Territory of New Mexico under the Mexican government from the ninth day of April, eighteen hundred and thirty-nine, until the last of October, eighteen hundred and forty-three. During the same time General Manuel Armijo was governor of the Territory of New Mexico under the Mexican government. I knew, during that time, Ventura Trujillo. He lived *at* in San Miguel del Bado, in the present county of San Miguel, in the Territory of New Mexico. I remember that about the year eighteen hundred and forty-one or eighteen hundred and forty-two said Ventura Trujillo petitioned to said Governor Armijo for a grant of land situated in the then "demarcacion" of said San Miguel del Bado, now the county of San Miguel, at a place known as "Apache Spring" (Ojo del Apache). I do not remember the boundaries of the lands asked for, but it was situated near the grants formerly made to the town of Anton
128 Chico, to Juan Estevan Pino and to Antonio Ortiz, and to the town of San Miguel del Bado. The said Governor Armijo granted the said petition and issued a decree granting the land prayed for to the petitioner, and directed the corresponding constitutional alcalde (whose name I do not remember) to place the petitioner in possession of the lands granted as aforesaid; which said decree he signed as governor of the Territory, and I signed the same along with him as secretary of said Territory. The constitutional alcalde, to whom was referred the matter of putting the petitioner in the possession of the said lands, made, some time afterwards, his return that he had placed the petitioner, Ventura Trujillo, in possession of the said land in obedience to said decree and order, after which the original papers and the return of the said alcalde were duly deposited in the archives of New Mexico, and remained therein under my charge as public records, I being at that time the legal custodian of said archives and records by virtue of my said office. I have no interest whatever in the lands referred to, nor in the claim for the same. I know that from the time of the making of said grant the said Ventura Trujillo was considered and reputed to

be the lawful owner and possessor of said lands by the people in general, as well as by the constituted authorities of the Territory of New Mexico under the Mexican government. I cannot say as to whether the sons of the said Ventura Trujillo were joined with him in the said grant or not. He was the head of the family, and managed and controlled all the family affairs under the Mexican customs. I do not know that said papers and records pertaining to said grant are now in the archives of New Mexico, as I have been informed that much of the archives and records have been lost and destroyed. It has been so long since I saw said original papers in this case that, without refreshing my memory by some of them, I cannot state minutely the facts and particulars of said grant. The papers, however, were full and complete and the grant perfect, according to the laws of Mexico.

GUADALUPE MIRANDA. (RUBRIC.)

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Donna Ana, } ss:

I, Benjamin Stevens, deputy clerk of the third judicial district of the Territory of New Mexico, hereby certify that on the 18th day of November, A. D. 1873, at the clerk's office of said third judi-
129 cial district in La Mesilla, county of Donna Ana, Territory of New Mexico, being the time and place appointed by me in that behalf, before me came personally Guadalupe Miranda, who, after being carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter set forth and described in the commission directed to me by the surveyor general of New Mexico and hereto annexed, did, in my presence, subscribe the foregoing deposition after the same was reduced to writing by me.

That I am not of counsel in said matter, nor in anywise interested in the result of the same in the said application before the surveyor general.

In witness whereof I have hereunto set my hand and affixed the seal of the said district court of the third judicial district of the Territory of New Mexico this fifteenth day of November, A. D. 1873.

[SEAL.]

WM. R. SNIDER, *Clerk*,
By BENJAMIN STEVENS,
Deputy Clerk.

130 *Papers in Reported Number* 72.

131 SANTA FÉ, N. M., *Sept.* 21, 1872.

Hon. James K. Proudfit, surveyor general, Territory of New Mexico.

SIR: You will find enclosed the petition of John L. Taylor, of Apache Spring, San Miguel county, N. M., with the original title papers and deeds of transfer. You will also find a sketch map of the land included in the boundaries in the original grant. I wish to prove the occupancy and residence of the present owner, Mr.

John L. Taylor, and will produce that proof at such time as may suit your convenience.

Yours respt.,

JOHN S. WATTS,
Att'y for John L. Taylor.

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

Know all men by these presents that I, John L. Taylor, a resident of Apache Spring, San Miguel county, New Mexico, an owner and occupier of the ranch known as the Apache Spring, situate in San Miguel county, Territory of New Mexico, have constituted and appointed, and do by these presents constitute and appoint, John S. Watts, attorney-at-law, of Santa Fé, New Mexico, my true and lawful attorney, for me and in my name to present and prosecute my claim to the Apache Spring grant of land before the Hon. James K. Proudfit, surveyor general of the Territory of New Mexico, for its investigation and approval and before Congress for its confirmation, and when confirmed to apply for its survey and patent, and I hereby ratify and confirm what my said att'y may do in the premises as fully as if done by me in person.

Witness my hand and seal this the 2d day of December, 1872.

JOHN L. TAYLOR. [SEAL.]

Witnesses:
M. BREEDEN.
DAV. J. MILLER.

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

132 This day personally appeared before me, M. Breeden, clerk of the United States district court in and for the 1st judicial district, Santa Fé county, Territory of New Mexico, the above-named John L. Taylor, to me personally known as the person signing the above power of att'y, and in my presence acknowledged the execution of the above power of att'y to John S. Watts to be his voluntary act and deed for the purposes therein mentioned.

Witness my hand and seal of said court, at Santa Fé, New Mexico, this 2d day of December, 1872.

[SEAL.] M. BREEDEN, *Clerk.*

(Endorsement:) Power of attorney. John L. Taylor to John S. Watts.

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

To the Hon. James K. Proudfit, surveyor general of the Territory of New Mexico, county of Santa Fé, sitting at Santa Fé, New Mexico, for the hearing of private land claims under the 8th section of an act of Congress passed July 22nd, 1854. See vol. 10, Statutes at Large, p. 309:

Your petitioner, John L. Taylor, resident of Apache Springs, San Miguel county, Territory of New Mexico, most respectfully repre-

sents to the hon. surveyor general that he is the owner of a certain tract or parcel of land situate in the said county of San Miguel, and bounded as follows, to wit: On the north by "La Mesa," on the south by the old road of "Los Chupaines," on the east by the "La Mesa de Los Chupaines," on the west by the hills bordering on the "Cañoncito de la Lagunita."

Your petitioner would further state that said grant of land was duly made according to law and the usage and customs of the laws of Mexico on the second day of July, eighteen hundred and forty-two (1842), by one Demasio Salazar, a justice of the peace in the said county of San Miguel del Bado, to one J. C. Bentura Trujillo, a resident of said county of San Miguel del Bado.

133 Your petitioner would further state that the said J. C. Bentura Trujillo, after the making of said grant and the execution and delivery of said title to him by the said Damasio Salazar, went into the quiet, peaceful, and *a*lwful possession, use, and occupation of said lands and so continued to use, cultivate, reside upon, and occupy said lands so granted to him until his death, and on the 2nd day of February, 1848, the said J. C. Bentura Trujillo was residing on said lands with his family and claiming the same as his under said grant. Your petitioner would state that at the date of said grant of said lands they were the vacant public lands of the Republic of Mexico, situate within the local jurisdiction of the said justice of the peace of San Miguel del Bado, Demasio Salazar.

Your petitioner would further state that after the death of the said J. C. Bentura Trujillo, to wit, on the 21st day of September, 1855, the widow and heirs of the said J. C. Bentura Trujillo, deceased, by Juan Nepomoceno Lopez, their duly authorized attorney, sold, transferred, and conveyed said lands, houses, and improvements thereon situate to one Juan B. Lucero, then and there a citizen of the United States and domiciled within said jurisdiction of San Miguel del Bado, and the said Juan B. Lucero was then and there placed in the lawful, peaceful, and quiet possession of said premises and so continued until the 24th day of March, 1866, when the said Juan B. Lucero bargained, sold, and conveyed said lands to the said petitioner, John L. Taylor, and Henry D. Gorham and placed the said John L. Taylor and Henry D. Gorham in the like quiet, peaceful, and lawful possession, use, and occupancy of said lands, with the houses and improvements thereon situate.

Your petitioner would further state that during all the time from the date of said purchase and possession of said lands he, the said petitioner, has continued to live upon, use, cultivate, and enjoy said lands and make said lands his home and permanent residence for himself and family.

Your petitioner would further state that he knows of no conflicting claim of title to said lands nor does he believe that the

134 lands within the boundaries above set forth as his will in any manner encroach upon the lands of any adjacent owners.

Your petitioner would further state that the long-continued occupancy, use, cultivation, residence, and claim to said lands vested in the original grantee a perfect title to said lands and creates such

title as was protected by the treaty of Guadalupe Hidalgo, 8 and 9 articles, and by law entitled to be confirmed to your petitioner as the *bona fide* holder of said original title to said lands and actual occupant and claimant ever since his purchase of said lands from the said Juan B. Lucero.

Your petitioner would further state that but little of said land is suitable for cultivation, and the grant does not contain a large quantity of land, but until the same is properly surveyed the quantity of land will be a matter of mere supposition and opinion.

Your petitioner would further state that he herewith presents a rough and imperfect sketch or plat of said grant indicating the out boundaries of said grant.

Your petitioner would further state that the said boundaries of said grant are well known, visable, and permanent landmarks, well known in the vicinity, and readily and certainly identified.

Your petitioner would further state that the original title papers and transfer and conveyance to the said Juan B. Lucero were duly recorded on the 10th day of May, 1866, in Book 3, pages 36 and 37, of the records of titles in and for San Miguel county, Territory of New Mexico, in which county said lands are situate. Your petitioner hereby presents to the hon. surveyor general of New Mexico the original title herein to J. C. Bentura Trujillo and the transfer of his widow and heirs to said lands, and asks that it may be filed with this petition and made a part of the same, marked Exhibit "A" herein, and that a duly certified copy be furnished your petitioner.

Your petitioner further states that he hereby presents the original deed of Juan B. Lucero to your said petitioner and the said Henry D. Gorham for the sale, conveyance, and transfer of said lands to your said petitioner by the said Juan B. Lucero, and asks
135 that it may be filed with this petition and made a part of the same, marked as Exhibit "B" herein, and that a duly certified copy of the same be furnished your petitioner herein.

Your petitioner would further state that he also files herein a correct and duly certified copy, translated from the original Spanish into English, of the said grant and transfer deed and conveyance from Juan B. Lucero, marked as Exhibit "C" herein, and asks it to be made a part of this petition.

Your petitioner would further state that he also now files as a part of this petition a duly certified copy in English of the original Spanish deed of conveyance to the said petitioner by the said Juan B. Lucero, and asks that it be made a part of this petition, marked as Exhibit "D" herein.

Your petitioner would further state that under and by virtue of the organic law of 9th September, 1850, the Congress of the United States by said act vested the Legislative Assembly of the Territory of New Mexico with power to pass laws upon all rightful subjects of legislation not in conflict with the Constitution and laws of the United States, and made all such laws of the Legislative Assembly of the Territory of New Mexico binding, effective, and in full force unless disapproved by the Congress of the United States.

Your petitioner would further state that on the 1st day of Febru-

ary, A. D. 1858, the said Legislative Assembly of the Territory of New Mexico passed an act for the protection of the rights and titles of the citizens of New Mexico, "having had possession for ten years of any lands, tenements, or hereditaments which have been granted by the Governments of Spain, Mexico, or the United States, or by whatsoever authority empowered by said governments to make grants to lands holding or claiming the same by virtue of a deed, or deeds of conveyance, devise, grant, or other assurance purporting to convey an estate in fee simple, and no claim by suit in law, or equity effectually prosecuted shall have been set up or made to the
136 said lands, tenements or hereditaments within the aforesaid time of ten years then and in that case the person or persons, their heirs or assigns, so holding possession as aforesaid, shall be entitled to keep and hold in possession such quantity of lands as shall be specified, and described in his, her, or their deed of conveyance, devise, grant, or other assurance as aforesaid in preference to old and against all and all manner of person or persons whatsoever."

Your petitioner would further state that he now is, and always has been, a loyal citizen of the United States, and he and his family, and those under whom he claims, have resided upon, used, occupied, and claimed said grant of land ever since the 2nd day of July, A. D. 1842, now more than twenty years, without any suit in law or equity having been instituted or prosecuted effectually against him or those under whom he claims, and the said petitioner asks that the protection given by said act of limitations of the Legislative Assembly of the Territory of New Mexico, found on page 516 of the Compiled Laws of New Mexico, be enforced and applied to entitle the said petitioner to keep and hold in his possession the quantity of land in said grant and deed of conveyance mentioned.

Your petitioner would further ask that the hon. surveyor general of the Territory of New Mexico take jurisdiction of this claim under the said act of Congress of the 22nd of July, 1854, and upon the premises being found true and satisfactorily proven, your petitioner asks that said title of your petitioner be recognized and confirmed as a *bona fide* grant and perfect title, and that said claim may be reported to the Secretary of the Interior with the view to its being sent to Congress to be confirmed as a valid title to said lands entitled to recognition and protection as a *bona fide* grant and entitled to confirmation under the treaty of Guadalupe Hidalgo, made the 2nd day of February, A. D. 1848, between the United States and Mexico.

Your petitioner would further state that he herewith presents a rude and imperfect sketch map or plat of the boundaries of said grant and the form of the grant without undertaking to state
137 that on actual survey the said sketch map or plat will be accurate or correct, which could only result from actual survey of the said boundaries called for in said grant and title papers in the case. Your petitioner asks that this rude sketch or map of the boundaries of said grant be made a part of this petition and marked as Exhibit "O" herein.

Your petitioner would further state that one Henry D. Gorham

was a partner of the said petitioner in said ranch, and the deed of Juan B. Lucero, under date of 24th March, 1866, is executed to your petitioner and the said Henry D. Gorham jointly, and this will more fully appear by reference to said deed, hereby made a part of this petition, marked Exhibit "B" herein.

Your petitioner would further state that, as surviving partner of the firm of Taylor & Gorham and as administrator of the estate of said Henry D. Gorham, deceased, the said petitioner, under authority of the probate court of San Miguel county, sold and conveyed to May Hays, of Las Vegas, New Mexico, said interest of said Henry D. Gorham and executed to him a deed for the same on the 22nd day of July, 1869, a certified copy of which deed is made a part of this petition, marked as Exhibit "L" herein.

Your petitioner would further state that the conveyance and transfer of said May Hays to said petitioner was made 22nd July, 1869, and a certified copy of said transfer and deed of the said May Hays to your petitioner, marked as Exhibit "M" herein, is now filed with this petition.

Your petitioner further asks that upon the investigation of this title, if found valid and *bona fide* and entitled to confirmation by Congress, that its confirmation be made to the said John L. Taylor, the present owner by regular claim of title from the original grantee herein; all of which is most respectfully submitted to the action and consideration of the hon. surveyor general in and for the Territory of New Mexico.

JOHN L. TAYLOR,
By JOHN S. WATTS, *Att'y.*

Endorsement: Ventura Trujillo. File 148. John L. Taylor. Petition for confirmation of Apache Spring grant.

138 This document is duly recorded on pages 97, 98, 99, 100, 101, 102, and 103, in vol. 4 of Land Claim Records in the office of the surveyor general.

(Here follows map marked page 139.)

140 Office copy.

Ojo del Apache tract.

VENTURA TRUJILLO or BENTURA TRUXILLO, Original Grantee; John L. Taylor, Claimant.

(*Opinion of Surveyor General.*)

The petitioner, John L. Taylor, by John S. Watts, his attorney, brings his claim before me and asks approval of his alleged title to the Ojo del Apache of Apache Springs tract of land in the county of San Miguel, under the act of the territorial legislature of New Mexico, approved February 1, 1858, entitled "Act of limitation," the treaty of Guadalupe Hidalgo, and the act of Congress of July 22, 1854, establishing this office.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

The petition sets forth that Demasio Salazar, a justice of the peace, granted the tract of land in question to Bentura Trujillo on July 2, 1842; that afterwards Trujillo went into possession; that he lived there February 2, 1848; that September 21, 1855, Juan Nepomoceno Lopez, as attorney for widow and heirs of Trujillo, deceased, sold and conveyed the land to Juan B. Lucero. See grant paper and Exhibit "D." That Lucero took possession and held it until 24 March, 1866, when he sold and conveyed it to John L. Taylor and Henry D. Gorham. See Exhibit "B." That John L. Taylor, as administrator of the estate of Gorham, deceased, sold and conveyed the interest of Gorham to May Hays July 22, 1869—see Exhibit "L"—and on same day Hays deeded the same share to Taylor, the petitioner. See Exhibit "M." Much other matter is contained in the petition, but the above synopsis sufficiently sets forth the ppoints to be considered.

The tract of land claimed is large, containing not less than 25,000 acres, and very likely much more than that. The petition
141 recites that previous to the occupation by Trujillo the lands in question were "vacant public lands of the Republic of Mexico," and upon this point there is no dispute.

I have not been referred to or shown any Mexican law or regulation in force in this Terri ory on July, 1842, or at any other time, which conferred upon justices of the peace, or upon any officer except the governor and captain general, the power and authority to make gifts, concessions, or sales of the "vacant public lands of the Republic of Mexico." This office is not supplied with any laws or reports of law decisions, either Spanish, Mexican, or American, except the United States Statutes at Large, nor is counsel provided for the United States in the investigation of private land claims in this office. I have not been able to find and have never seen the act said to have been passed by the Mexican congress August 18, 1824, or the regulations said to have been made under it November 21, 1828, relating to grants of lands in this and other Territories then belonging to the Republic of Mexico.

In a borrowed book, however, 20 Howard, I find in opinion of the court, in The United States *vs.* Cambuston, 59 and following, this abstract:

"The regulations for the colonization of territories of the government of Mexico, made 21 November, 1828, in pursuance of the act of the general congress, August 18, 1824, provided:

1st. That the governors of the territories should be empowered to grant vacant lands, among others, to private persons who may ask for them for the purpose of cultivating and inhabiting the same.

2d. That every persons soliciting lands shall address to the governor a petition, expressing his name, country, and religion, and describing as distinctly as possible, by means of a map, the land asked for.

3rd. The governor shall proceed to obtain the necessary information, whether the petition contains the proper conditions required by law of 18 August, 1824, both as regards the land and the peti-

tioner, in order that the application may be at once attended to; or, if preferred, the municipal authority may be consulted, whether there be any objection to the making of the grant.

4th. This being done, the governor will accede or not to such petition, in conformity to the laws upon the subject.

5th. The definitive grant asked for being made, a document signed by the governor shall be given, to serve as a title to the party interested, wherein it must be stated that the grant is made in exact conformity with the provisions of the law in virtue of which possession shall be given.

6th. The necessary record shall be kept, in a book provided for the purpose, of all the petitions presented and grants made. with maps of the lands granted, and a circumstantial report shall
142 be forwarded quarterly to the supreme government."

The court mentions other regulations not deemed essentia to recite in the case before it. In that case Cambuston claimed lands under a grant made by Pico, then governor of California, territory of Mexico, on the 23 May, 1846, and the court held tha because it was not shown in the record that Governor Pico had com plied substantially with the requirements of the regulations recited the grant to Cambuston could not be confirmed to him. In regard to matters of custom, the court in that case says: "The ques tion here is not whether the fact of the habitual grant of lands b Mexican governors of the Territory of California to settlers, and also whether the customary mode and manner of making grants do no furnish presumptive evidence both of the existence of the power and of a compliance with the forms of law in the execution? We agree that the affirmative of these questions has been frequently deter mined by this court in cases involving Spanish titles in the Terr tories of Louisiana and Florida; but no such presumptions are neces sary or admissible in respect to Mexican titles granted since the ac of 18 August, 1824, and the regulation of 21 November, 1828. Au thority to make the grants is there expressly conferred on the gov ernors, as well as the terms and conditions prescribed upon whic they shall be made. The court must look to these laws for both th power to make the grant and for the mode and manner of its exer cise, and they are to be substantially complied with, except so fa as modified by the usages and customs of the government unde which the titles are derived, the principles of equity, and the deci ions of this court."

It seems to me that the law laid down by the Supreme Court the United States in the case just cited is fatal to the claim unde consideration, for the claim of Cambuston appears to have bee stronger than the one before me, because in that case the grant wa made by the governor of the Territory, who might have made legally, but failed by omitting to follow and execute a part of th prescribed regulations, while in this case the grant was made by justice of the peace who, so far as I can learn, was not empowered either by law or custom under any circumstances whatever, to mak donations of the "vacant public lands of the Republic of Mexico. It does not appear that any attempt was ever made to comply wit

any single one of the regulations of 1828 or the law of 1824 in making this grant.

There is no evidence before me that the land was occupied and possessed by any person at the date of the treaty of Guadalupe Hidalgo, 2 February, 1848, or before that date or after it until
143 1855. Lucero, a witness, swears that when he first knew Trujillo he was living at the place, which was perhaps about the year 1855; that he does not know how long he lived there, but that it was a considerable time; that Trujillo moved away from there and died at the town of San Miguel; that he, the witness, bought the land after the death of Trujillo for twelve dollars and moved upon it; lived there about five years and sold it to Taylor, who now lives upon it. This is all the evidence of occupation. It will be seen that only five years of the time is definitely accounted for between the date of the grant, in 1842, and the occupation by Taylor, in 1866, a period of twenty-four years, and the five years was long subsequent to the treaty of Guadalupe Hidalgo and the American occupation of the country. The witness Lucero swears that he first knew Trujillo in 1855; that he knew Trujillo occupied the land a considerable time, and yet the deed in evidence from Lopez, claiming to represent the widow and heirs of Trujillo, deceased, to Lucero, is dated 21 September, 1855. Lucero further swears to living on the property about five years and then selling to Taylor, and his deed to Taylor, in evidence, is dated 24 May, 1866. So, although he owned the place eleven years, there was six years of the time that he did not occupy it. The testimony of this single witness is contradictory, is opposed by the official written record, and is generally unsatisfactory and proves nothing. It does not appear that Lopez had any legal right to sell the property as representative of the widow and heirs of Trujillo, deceased, nor that Trujillo was dead at that time; but the testimony of Lucero would go to show, if it shows anything, that Trujillo was living on the land in 1855 and for a considerable time afterwards. I think that there are other defects in the chain of title from Trujillo to Taylor, and that the whole matter of deraignment of title and of possession is very badly muddled, to say the least.

I do not think that the "act of limitation" of the territorial legislature, approved February 1, 1858, has any bearing upon this title, and if it has I have no jurisdiction under it. This office only
144 has power to report to Congress, for confirmation or rejection, such original Spanish or Mexican grants of land as may be submitted to it under the eighth section of the act of Congress of 22 July, 1854, establishing this office as directed by the Commissioner of the General Land Office and following the decisions of the Supreme Court of the United States. If, in any case, I am satisfied that the grant is legal and chain of title perfect from original grantee to present claimant, I may approve the grant to the latter, but not then can my action prejudice the legal rights or equities of any unknown or adverse parties in interest. All disputes between parties claiming to hold under the original grantee or by prescription or otherwise; in fact, all matters connected with adverse inter-

ests, possession or color of title, must be adjudicated in the courts of the country. I have no jurisdiction or power over them and ordinarily in cases of valid grants can only recommend confirmation to legal representatives of original grantee. If the claimant's theory on this point is correct it would be only necessary for a party to live ten years on the public domain undisturbed to hold any boundless quantity that he might choose to claim. The absurdity of such law is apparent*ly* to the dullest comprehension, and I do not think it would hold water worth a cent. Besides, that act as recited in the petition in this case refers only to parties holding under the "Government of Spain or Mexico or the United States, or by whatsoever authority empowered by said governments to make grants to lands," and so would not apply here, as the grant in this case was not made by either of said governments or by any authority by either of them "empowered * * * to make grants to lands."

Counsel for petitioner, in support of the proposition that a justice of the peace might donate public lands under the laws of Mexico, refers me to Reynolds *vs.* West, 1 California, 322, where it was held

"that a grant of land made by a Mexican alcalde before the
145 war will be presumed to have been made in the course of his ordinary and accustomed duties and within the scope of his legitimate authority, and the burden of the proof lies on him who controverts the validity of such a grant to show that it is not made by a competent officer or in the form prescribed by law." The quotation is from 1 Cal. Digest, 570, sec. 477.

This decision is classified under the head of pueblo lands, and undoubtedly refers to such lands belonging to the municipality as the alcalde may have had the legal right in California to grant for the good of the community and by its direction. Setting aside the question of the distinction between the powers and duties of an alcalde and a justice of the peace under the Mexican laws and customs, and also the difference in local laws in the two Territories, which might be important if we only knew it, I think that as the land in controversy in that case was not, at the time of granting, "vacant public lands of the Republic of Mexico," but pueblo lands, the decision is of no possible authority in this case. I have not seen the report of the case in full; but if the alcalde made a grant of the "vacant public lands of the Republic of Mexico" after August 18, 1824, it was illegal and void, according to the decision of the Supreme Court of the United States in United States *vs.* Cambuston, 20 Howard, 59, before cited, and if made previous to that date the case is not parallel to the one before me. This is the only decision of any of the courts which has been referred to by counsel on this point.

Following the line of argument and reasoning pursued and the r-utine of the Supreme Court of the United States, as cited, and there being no evidence of such continued actual occupation as would bring this claim within the law of prescription, I conclude that the claimant Taylor has not established any legal or equitable title to the lands claimed by him or those under whom he holds, either previous to or at the date of the treaty of Guadalupe Hidalgo, Feb-

ruary 2, 1848, and that said lands belong, of right, to the public domain of the United States.

146 I therefore recommend that Congress do not confirm this grant of lands, and transmit herewith a complete transcript of the record.

JAMES K. PROUDFIT,
Surveyor General.

United States surveyor general's office, Santa Fé, New Mexico, December 19, 1872.

Endorsement: File 148. Opinion of surveyor general. Rejected Dec. 19, 1872.

This document is duly recorded on pages 119, 120, 121, 122, 123, 124, 125, and 126, in vol. 4 of Land Claim Records, in the office of surveyor general.

147 LAW OFFICE OF S. B. ELKINS,
SANTA FÉ, NEW MEXICO, *Sept. 22nd*, 1873.

To the Hon. James K. Proudfit, surveyor general of the Territory of New Mexico:

Your petitioner, John L. Taylor, would respectfully represent that since the application made to your office for the approval of a grant of land known as the Ojo del Apache grant, reported as No. 72, and which was rejected by you December 19, 1872, he has been able to discover additional evidence, material on its character, bearing upon the validity of the grant in question.

That he can establish by one Rafael Aragon, who, at the time of the date of the instrument on file in your office, and which was executed by one Damasio Salazar, was the secretary of said Salazar, that there was a *bona fide* grant from the then governor of the Territory of New Mexico, and that the instrument executed by the said Salazar was only in pursuance of said grant.

Also that Guadalupe Miranda, who was then secretary to the governor of said Territory, is now living, and that he expects to be able to establish by said Miranda the existence of a grant by the governor of the land in question to the original grantee, Ventura Trujillo, and that the same was countersigned by him as such secretary.

Your petitioner further shows that said testimony was entirely unknown to him at the date of his application, and that to deprive him of the privilege of introducing such testimony will be very injurious if not destruction of his vested rights.

Therefore he asks that he may be permitted to introduce such testimony as he has been able to obtain, and that such action be taken by you as will suspend final action on his said application until such testimony be heard, and that a day be named to take the same. All of which is respectfully submitted to your consideration.

JOHN L. TAYLOR,
By his attorneys, S. B. ELKINS AND
HENRY L. WALDO.

Endorsement: File 148. Ventura Trujillo. Petition to
148 present new testimony in the case. Filed in sur. gen.'s office this Sep. 23, 1873. Miller, C. C.

Sup-lemantary.

This document is duly recorded on pages 127 and 128, in vol. 4 of Land Claim Records, in the office of the surveyor general.

149 Retained duplicate.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *September* 23, 1873.

Mr. John L. Taylor.

SIR: Your petition, dated yesterday, by your attorneys, Messrs. Elkins and Waldo, in regard to the private land claim of the Ojo del Apache, is received and placed on file.

In reply I have to say that I can do nothing to suspend final action on your claim, as the record is now the property of the Congress of the United States; but will very cheerfully hear or receive any new testimony that you may have to offer at any time upon one day's notice, and will transmit the same to the Commissioner of the General Land Office, to be by him submitted to Congress in the usual form, together with any modification of my former opinion that I may deem proper and just.

I am respectfully your obedient servant,

JAMES K. PROUDFIT,
Surveyor General.

Endorsement: File 148. Ventura Trujillo. Sur. gen.'s letter of Sep. 23, '73, upon petition to present new testimony.

Supplementary.

This document is duly recorded on page 128, in vol. 4 of Land Claim Records, in the office of the surveyor general.

150 Retained duplicate.

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. M., *Feb.* 7, 1874.

Hon. Willis Drummond, Commissioner of the General Land Office, Washington, D. C.

SIR: I have the honor to transmit in triplicate additional testimony presented by the claimant in case of private land claim of Ojo del Apache, heretofore reported by me as No. 72, together with correspondence relating thereto.

The claimant requests that the same be laid before Congress for its consideration in connection with the record heretofore transmitted.

This new testimony goes to show that there was a grant made by Gov. Armijo to Ventura Trujillo, but is based entirely upon memory

of witnesses. For various reasons I desire to make no modification of my previous opinion, principally because I doubt my jurisdiction, the matter being now before Congress. I therefore simply submit the additional testimony, not doubting that Congress will arrive at a just conclusion upon consideration of the whole record.

I am, very respectfully, your obedient servant,

JAMES K. PROUDFIT,
U. S. Surveyor General.

Endorsement: File 148. Ventura Trujillo.

Supplementary.

Letter of transmittal, Feb. 7, 1874.
This document is duly recorded on page 136 of Land Claims Records, in office of surveyor general.

151 In the Court of Private Land Claims, Santa Fé, New Mexico, August Term, 1896.

MAY HAYS *vs.* UNITED STATES. } No. 101. Ojo del Apache Grant.

Opinion of the court by FULLER, A. J., delivered November 23, 1896:

In the case of May Hays *vs.* United States, No. 101, for the confirmation of the Ojo del Apache grant, it is alleged that in June, 1842, one Ventura Trujillo petitioned the governor for the grant of land in controversy; that the governor made the grant and ordered one Salazar, who was constitutional alcalde within the demarcation of San Miguel del Bado, to put the petitioner in the possession of the land and return the proceedings to the governor. It is alleged that that was all done, and that the petitioner was put in possession and the return made upon the order of the governor, together with the certificate that possession had been given, and that the papers were all filed in the archives, and that they had been lost or destroyed, all of them, except that one which is spoken of as the execution certificate, showing the execution of the governor's order to place the petitioner in the possession of the land; and it is asked that secondary evidence may be offered of these proceedings, and that title may be confirmed to May Hays, successor in title to Trujillo.

The plaintiff has introduced much testimony in the case for the purpose of establishing the allegations of the petition that the grant had been made by the governor and the loss of the papers.

Among other witnesses he has introduced Guadalupe Mirande, who was the secretary of the Territory of New Mexico under the Mexican regime from 1839 up to 1843, and whose testimony was taken and used before the surveyor general in the year 1873, thirty years after he went out of office. He testifies that he has recollection that the governor did make the grant and did order Salazar to put the

petitioner in possession, and that Salazar made a certificate
152 of his action in that behalf, and all the papers were returned to his office by him and filed in the archives. He also testifies from his knowledge of such matters that all this was done regularly according to the laws of the country at that time. He has no memorandum, he says, by which to refresh his recollection, but he testifies to these facts from memory alone.

There is the testimony also of Aragon, who was the secretary of the alcalde, Salazar, and he testifies that at the time Salazar executed the governor's order of possession that there was present an order from the governor directing him so to do, and that all these papers were duly returned; that is the substance of the testimony on the subject of the making of the grant by the governor.

As to the subject of the loss of the grant the evidence is inferential, from the fact that in 1873 there was some loss or destruction of the archives during the administration of an American, Governor Pyle. There is no evidence tending to show any loss or destruction, although there is an allegation to that effect, either before that time or at any other time.

If these facts stood alone and without any explanation or contradiction, possibly the court might feel constrained to confirm the grant as prayed for in the petition, but the petitioner has himself offered in evidence a paper marked Plaintiff's Exhibit "A," which he alleges is the certificate of the execution of the governor's order by the alcalde, Salazar, and it becomes our duty on the threshold of this case to place a construction upon that paper. It does not profess to be in terms anywhere throughout the paper the execution of the governor's order, but the action of the alcalde, Salazar. On the contrary, its whole frame and structure indicates that it was an independent action taken by the alcalde himself. He recites that the petitioner was there present and made his petition for the land. He goes on then and declares that he had adjudged that the petitioner had meritorious grounds for making the application. He then declares that his finding on the petition was based upon meritorious grounds, and that he had granted him by donation the lands with the boundaries petitioned for, and he declares that he did this in obedi-
ence to the supreme decrees and laws of the land. He then
153 declares further that he pointed out to the petitioner the boundaries of the grant which he made. He does not allege anywhere nor can it be inferred from what he states that he ever put the petitioner in juridical possession of the land according to the customs of the country; but, as we construe it throughout the whole document, he is acting on his own motion, and he alone made the grant. Now, against the evidence of this writing is the mere memory of the secretary of the Territory, and, as is stated before, without any note or memorandum at all, and that testimony was given thirty years after the alleged transaction, and the testimony of Aragon, in which he offers no explanation at all for the omission of the document, which it is stated he had prepared at the instance of Salazar, tending to show the execution of an order of possession, simply saying that the same was omitted by mistake;

to such recollections as these the court is unable to give the construction asked for by the petitioner upon the above-named document which he presented. The court therefore is constrained to believe that the possession of this land was held and the application for this land was made under and solely by virtue of an alcalde grant. The court is therefore constrained to reject the claim, as the alcalde had no authority to make a grant. The claim of the petitioner is therefore rejected.

Justices Stone and Sluss dissent.

THOMAS C. FULLER,
Associate Justice.

154 And afterwards, to wit, on the 12th day of said term, the same being November 23d, 1896, the following, among other, proceedings were had, to wit:

In the Court of Private Land Claims.

MAY HAYS
vs.
UNITED STATES. } No. 101. Ojo del Apache Grant.

This cause having been tried and submitted and taken under advisement by the court upon full legal proof and hearing at a former day of the present term, *and* the court, being now sufficiently advised in the premises doth find that the allegations of said petition for the confirmation of the private land claim commonly known as the Ojo del Apache grant, and being No. 72 as reported by the surveyor general to Congress, situate in the county of San Miguel, Territory of New Mexico, has not been sustained by satisfactory proof, and that the title so asserted to the said tract of land claimed to have been granted by Manuel Armijo, governor of the Territory of New Mexico, previous to the second day of July, A. D. 1842, to one Ventura Trujillo, and juridical possession of which is
155 alleged to have been given to said Ventura Trujillo on July 2, 1842, by Damasio Salazar, a justice of the peace in the second demarcation of San Miguel del Bado, is of no validity, and that said grant or concession to said tract of land, more particularly described as follows, on the north the mesa, on the south the old road to Las Chupainas, on the east the Mesa de Los Chupainas, and on the west the hill bordering on the Cañoncito de la Lagunita, is not such an one as the United States are bound to recognize and confirm by virtue of the colonization law of August 18, 1824, the colonization regulations of November 21, 1828, the laws and ordinances of Spain or Mexico, the laws of nations, or the treaties of cession of Mexico to the United States.

It is therefore ordered, adjudged, and decreed that the claim to the said described tract of land under said grant and possession alleged to have been made and confirmed as aforesaid be, and the same is hereby, rejected, and said petition is dismissed.

156 In the United States Court of Private Land Claims.

MAY HAYS, Plaintiffs and Appellants,
vs.
THE UNITED STATES OF AMERICA, Defendant and Appellee.
} No. 101. "Ojo del Apache."

The above-named plaintiff and appellant, May Hays, considering himself aggrieved by the decree entered on the 23rd day of November, 1896, in the above-entitled proceeding, does hereby appeal from said decree to the Supreme Court of the United States and pray that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) CATRON, SPIESS & GORTNER,
Attorneys for Plaintiff and Appellant.

And now, to wit, on the 21st day of May, A. D. 1897, it appearing to the satisfaction of the court that the said appeal should be allowed, it is ordered that an appeal be, and hereby is, now allowed as prayed for.

(Signed) JOSEPH R. REED,
Chief Justice.

157 And be it further remembered that thereafter, to wit, on 30th day of June, 1897, a stipulation was filed in the office of the clerk; which said stipulation is in the words and figures following, to wit:

158 In the United States Court of Private Land Claims, Sitting at Santa Fé, in the Territory of New Mexico.

MAY HAYS, Plaintiff,
versus
UNITED STATES ET AL.
} No. 101. "Ojo del Apache" Grant.

Stipulation as to Certain Deeds and Exhibits Showing the Chain of Title in the Above-entitled Cause.

It is hereby stipulated and agreed that the following deeds and exhibits introduced on the trial of said cause shall be omitted from the record sent up on appeal, it being admitted by the Government that the plaintiff, May Hays, has succeeded at least in part to the interest, if any, which the said Benturo Trujillo had in the tract herein sued for, to wit:

Exhibit 3, deed from Andrea Trujillo and Juan Catarino Romero, her husband; Francisco Trujillo and Jacinta Vigil, his wife; Maria Apolinaria Romero, Maria Sefarina Garcia, wife of Donaciano Trujillo; Isidro Lopez and Tomasa Tabares, his wife; Juan Lopez and Gregoria Romero, his wife, and Donaciano Trujillo, husband

of Seferina Garcia, to Louis Sulzbacher, conveying half their interest in the said tract acquired by virtue of inheritance as the direct or indirect heirs of Bentura Trujillo, deceased, and Maria Gertrudes Gonzales, deceased, wife of said Trujillo.

Exhibit 4, deed from Lazaro Sandoval and Margarita Baca, his wife, and Guadalupe Trujillo and Francisca Lopez to Louis Sulzbacher, conveying all their interest in the tract acquired by virtue of inheritance as the direct or indirect heirs of the original grantee.

Exhibit 5, deed from Juan Catarino Romero and Antonia Trujillo, his wife, and Francisco Trujillo and Jacinta Vigil, his wife, to Louis Sulzbacher, conveying all their interest in the tract acquired by inheritance, etc., as above.

Exhibit 6, deed from Donaciano Trujillo and Serafina Garcia, his wife, and Apolinaria Romero to Louis Sulzbacher, conveying all their interest in the tract acquired, as above.

Exhibit 7, deed from Guadalupe Trujillo to Louis Sulzbacher, conveying all his interest in the tract aforesaid.

159 Exhibit 8, deed from Lazaro Sandoval and Margarita Baca his wife, to Louis Sulzbacher, conveying all their interest in the tract, as aforesaid.

Exhibit 9, deed from Isidro Lopez and Tomasa Tabares, his wife, to Jose Lino Rivera, conveying one undivided ninth part of the tract acquired, as aforesaid.

Exhibit 10, deed from Jose L. Rivera and Rita Lopez de Rivera, his wife, to May Hays, conveying the interest in the last-aforementioned deed.

Exhibit 11, deed from John L. Taylor, administrator of the estate of Henry D. Gorman, to May Hays, being sale by order of the probate court and conveying one undivided half of the tract.

Exhibit 12, deed from Louis Sulzbacher and Pauline, his wife, to May Hays, conveying all their interest in the tract.

Exhibit 13, deed from John L. Taylor and Mary E., his wife, to May Hays, conveying all their interest in the tract.

CATRON, SPIESS & GORTNER,
Attorneys for Plaintiff.
MATT. G. REYNOLDS,
United States Attorney.

June 29th, 1897.

160 UNITED STATES OF AMERICA, }
Territory of New Mexico. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 159 pages contain a full, true, and perfect transcript of all the papers, pleadings, record entries of proceedings, and evidence in the cause lately pending in said court, wherein May Hays was petitioner and The United States were defendants, except certain original exhibits named in a stipulation of said parties, filed in my office on the 30th day of June, 1897, which is included in this transcript, and I further certify that this tran-

script constitute a full, true, and perfect record of the said cause, as shown by the records and files of my office.

Witness my hand and the seal of said court, at Santa Fé, New Mexico, this 30th day of June, A. D. 1897.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER,
Clerk C. P. L. C.,
By IRENEO L. CHAVES,
Deputy Clerk C. P. L. C.

Endorsed on cover: Case No. 16,656. Court of private land claims. Term No., 155. May Hays, appellant, *vs.* The United States. Filed August 23d, 1897.

In The Supreme Court of the United States,

OCTOBER TERM, 1899.

APPEAL FROM THE

COURT OF PRIVATE LAND CLAIMS.

May Hays,
Appellant.
vs.
The United States,
Appellee.

This cause was commenced in the Court of Private Land Claims by May Hays, the appellant, for the confirmation of a grant of a tract of land situate in the County of San Miguel, Territory of New Mexico, known as the "Apache Springs," or "Ojo del Apache."

The petition for confirmation alleges that prior to July 2, 1842, Governor Manuel Armijo granted to Venturo Trujillo the tract of land known as Apache Spring (Ojo del Apache) and issued a decree to that effect directing the constitutional alcalde to place him in possession. That the said alcalde did so, and some time afterward returned that he had done so, and the original papers were duly deposited in the archives of New Mexico.

The petitioner further alleges that he has not the original or a copy of the petition of Trujillo, order or decree of the Governor and of the return made to the Governor by the alcalde, and that the same are not in the possession of the Surveyor General of New Mexico. That the archives of New Mexico, previous to the occupation by the United

States, and for some time thereafter, were kept very carelessly, and many of the papers and documents therein were lost and destroyed. The papers constituting said grant being among the number so lost and destroyed, and ask leave to give secondary evidence of the said petition, order and decree of said Governor, and the return of said Constitutional Alcalde. The petitioner also alleges that Damasio Salazar, a Justice of the Peace of the Demarcation of San Miguel del Bado (he was a Constitutional Alca'de) acting in conformity with the laws and customs then in force, placed Trujillo in possession of said tract of land called "Apache Springs" on July 2, 1842, described as follows: On the north a mesa, on the south the old road to Los Chupaines, on the east the Mesa de los Chupaines, and on the west the hills bordering on the Canoncito de la Lagunita.

That the original certificate of juridical possession, made by said alcalde, and which was given to said Trujillo, is now on file in the office of the Surveyor General of New Mexico, and that the copy thereof was returned by said alcalde with the original granting decree and has been lost with it.

That said Trujillo entered into possession of said tract of land so granted and occupied the same from about July 2, 1842, for about four years; that after him and claiming through him, his heirs and assigns, the property was occupied by Juan Lucero, Jesus Casados, John L. Taylor and the petitioner, May Hays, who by virtue of sundry and diverse mesne conveyances, now claims the ownership of the whole of said tract of land, and that ever since 1842, to the present time, the grantee, Trujillo, his legal representative and those claiming under him and them have held, claimed, used, occupied, owned and grazed upon the whole of said land peaceably and notoriously.

That said tract of land has not been surveyed, and the petitioner cannot state the amount thereof, but that it is not over eleven leagues.

That said Taylor, while he was the owner, made application to the Surveyor General for the approval of said grant, which was rejected December 19, 1872, and that on September 22, 1873, application was made to the Surveyor

General to reopen said application for confirmation, to receive new testimony which had been discovered in said cause. Said application was allowed so as to allow new testimony to be introduced, as shown by Exhibit F attached to the petition, and thereunder the testimony of Rafael Aragon, secretary of Damasio Salazar, the Constitutional Alcalde, who placed Trujillo in possession, and Guadalupe Miranda, Secretary of New Mexico during the administration of Manuel Armijo, was taken, which said testimony is a part of the evidence in this case, and is contained in the exhibit attached to the petition marked "A."

That both Rafael Aragon and Guadalupe Miranda are dead. That the said grant has always been claimed, occupied and held, since July, 1842, by said Venturo Trujillo, his heirs, grantees and assigns, and those claiming under them, as an individual grant made by the government of Mexico, and has been so generally recognized.

That the original documents by the Governor of New Mexico creating the grant are not now known to exist. That there are no gold or silver mines or lodes of mineral within the limits of the grant (page 1).

An amended petition was afterwards filed (page 11) containing substantially the same averments as to title and right, but making some additional parties defendants.

The United States answered, denying substantially the allegation of the first and fourth paragraphs of the petition, and alleging want of knowledge as to the remainder, asking for full proof as to the remainder of the allegations.

The cause was tried by the Court of Private Land Claims on the pleadings, evidence and stipulations contained in the record. The claim was rejected and the petition dismissed by a bare majority of the court. Justices Stone and Sluss dissenting from this decree. Hays appeaied.

POINTS INVOLVED IN THE CASE.

There are three points or questions to be considered in this case. First. Was there any grant made to the land in question by the proper authorities? Second. If said grant is not at present in existence, was it of record as a part of the archives, and has it been lost or destroyed? Third. Was the grant and tract of land under it occupied and held continuously and adversely by the grantee, his heirs and assigns, or as required by law?

As to the first point, a portion of the evidence which goes to establish it is the document Exhibit A, translated on page 59 of the record, which is in the following language:

(SEAL.)

"Seal fourth. One-fourth real.

"For the year eighteen hundred and forty and eighteen hundred and forty-one.

"In this second demarcation, San Miguel del Bado, on the second day of the month of July of the present year, eighteen hundred and forty-two, before me a citizen, Demasio Salazar, Justice of the Peace of said precinct, personally present appeared citizen Bentura Trujillo, citizen and resident of the first demarcation, soliciting the place and land commonly called the Ojito del Apache to establish in company with his children a farm on which he believed he will have the means necessary for the support of a large family, and to give tithes (illegible) and the holy church their corresponding portions, and I, said alcalde, finding the said petition to be a just one, and acting in conformity with the supreme decrees, have made him said donation in the name of God and the supreme Mexican nation, so that as a good patriot he will make use of it, observing the requirements which our laws provide, under the conditions and restriction that if he does not provide a protection to prevent the damages which may result to him, he is under obligation to bear them, it being commons and pasture grounds of the inhabitants of this precinct; and the boundaries corresponding to said grant are on the north the mesa; on the south the old road to Los Chupaines; on the east the

Mesa del los Chupaines; on the west the hills bordering on the Canoncito del Lagunita; and in order that this foregoing instrument may have the force and validity by law required, the aforesaid Trujillo requested me to interpose my authority as judicial decree, and I, the said justice, declared that I would interpose, and I did interpose so far as I am authorized by law. Those of my attendants signing with me, with whom I act by appointment, for the notorious lack of a notary public, there being none of any kind in this department. In form of law to all of which I certify.

(Signed) DAMASIO SALAZAR.

"Attending: RAFAEL ARAGON.

"Attending: SALVADOR GONZALES.

"And it is given on this ante-stamped, there being none of the proper stamp.

"SALAZAR."

Which said document is the act of juridical possession given by the alcalde to Ventura Trujillo when he was placed in possession. The original grant was returned by him to the Governor and placed in the archives, as will be seen by the evidence of Guadalupe Miranda, who was the Secretary of the Territory at the time. See page 102, where the evidence of Guadalupe Miranda is set out in full. Who testifies in November, 1873, that he was Secretary of the Territory of New Mexico during the time General Manuel Armijo was Governor. That he knew Ventura Trujillo at that time. That he lived at San Miguel del Bado, in the present County of San Miguel. That he remembers that about the year 1841 or 1842 said Trujillo petitioned Governor Armijo for a grant of land at the place known as Apache Spring; that he does not remember the boundaries, but is was near the grants made formerly to the Town of Anton Chico, to Juan Estevan Pino and to Antonio Ortiz, and to the Town of San Miguel del Bado. That the Governor granted the petition and issued a decree granting the lands prayed for to the petitioner, and directed the corresponding alcalde to place the petitioner in possession of the land granted, which decree he signed as Governor, and he, Miranda, signed the same with him as secretary. That the alcalde to whom it was referred, some time after-

ward, made his return that he had placed Trujillo in possession of the land in obedience to said decree and order, after which the original papers and the return of the alcalde were deposited in the archives of New Mexico and remained there under his charge as public records, he being custodian thereof by virtue of his office. That he does not know whether the said papers and records pertaining to said grant are in the archives of New Mexico, as he has been informed much of them had been lost and destroyed. That the papers were full and complete and the grant was perfect according to the laws of Mexico. By the evidence of Rafael Aragon said grant is also established. (See page 100.) He testified in substance, on the 31st day of October, 1873, before the Surveyor General, that he knew the tract of land known as Ojo del Apache, and gave its boundaries. That the grant was made to Ventura Trujillo and his children in the year 1841 by the Alcalde Demasio Salazar. That he wrote the granting document, and was at the time the secretary of the alcalde. That the grant was made under and in virtue of an order from the Governor, which was in writing and addressed to said Alcalde Salazar through Miranda, secretary of the Governor, and was in about this tenor, to-wit: "I am directed by his excellency, the Governor, to say to you that upon the receipt hereof you will proceed to the place called the Ojito del Apache, and will there place the petitioner Ventura Trujillo in possession of that land." That Salazar was addressed as alcalde of the second demarcation and the communication was deposited among the archives of the alcalde's office. The alcalde complied with the order by placing Trujillo in possession of the land and then reported to Secretary Miranda that the Governor's order had been executed. Salazar went upon the spot and placed Trujillo in possession and pointed out to him the boundaries. Trujillo went upon the land to occupy it, he thinks in July, 1842. That he occupied it four years, built a small house, constructed some small tanks and planted some ground, and was succeeded on the place by Juan Lucero, he by Jesus Casados, and he by John L. Taylor. That Manuel Armijo was Governor when the grant was made. That he, Aragon, had never held any office ex-

cept that of secretary to the alcalde. Exhibit "A," the paper of which the foregoing document signed by Salazar is a translation, was then shown to him, and he was asked if it contained any allusion to the order mentioned as given by Armijo, to which he replied: "I believe it contains none." He was then asked: "Why, in writing the grant paper Exhibit "A," did you not make some allusion therein to the order of the Governor?" To which he answered: "I presume it was omitted by mistake." He stated that when he wrote the paper the Governor's order had been turned into the alcalde's office. That Demasio Salazar was not an educated man, but quite a business man. That he could neither read nor write, could scarcely sign his name, and for that reason as alcalde he had to have a secretary.

Francisco Trujillo, a witness, sworn in the cause, page 83, et seq, also testified that his father, who was Ventura Trujillo, had brought a very rich woman from the Comanches, and after that the Mexican government made this grant to his father, and that there was an order signed by the government (governor) with a man to go and deliver the land to his father. That he knows the order was signed by Governor Armijo, and declared (directed) Damasio Salazar to go and deliver the land. That the land was delivered in the year 1842. That he was present when it was delivered by Salazar and Rafael Aragon, his secretary, and that a communication was signed stating that it had been delivered. On page 93 he states that he heard Salazar say, in respect to the order of the Governor, that the order was to deliver the land to his father, and then he says that Damasio Salazar sent a communication to General Armijo stating that the land had been delivered. That his father and Damasio Salazar both told him that it had been sent.

Encarnacion Lopez, a witness (page 76 et seq) testified that he was present when the property was delivered in 1842 to Ventura Trujillo by Damasio Salazar and Rafael Aragon, his secretary. That he saw Salazar, Aragon and Trujillo at the time. They were at his camp, and he was herding sheep at the Ojo del Apache. That it was stated at the time by those parties that Damasio Salazar delivered

the possession of the land by order of General Armijo to Damasio Salazar. That Aragon, Salazar and Trujillo, all of them, stated so.

Pascual Baca, a witness, stated that while he never saw the order of Governor Armijo, he knew it was made because everybody so stated that Ventura Trujillo so claimed when he first knew him; that he got the impression that Armijo had made the order for the grant, from Trujillo, and from what everybody said, and he saw him living there.

Claimant contends that this testimony establishes the fact that a grant was made, and became a part of the public archives of New Mexico, as stated in Miranda's testimony, he being the person who had charge of them at the time. That is stated positively and unequivocally by him. The only thing that Miranda, the Secretary of the Territory, is not positive about is the particulars or minutia of the grant or the boundaries, but that it was petitioned for and the grant made and the alcalde directed to give possession, and that the alcalde reported afterwards that the possession was given and that all the grant papers thereafter were placed in the archives, which were under his control, etc. He is positive and expresses no doubt about his recollection. The witness Rafael Aragon is also positive about what he remembers, and that is that the possession was given under and by virtue of an order coming from the Governor through Miranda, and that the possession was given, that he wrote the act of juridical possession himself, and that when he wrote it he neglected to refer to the order of the Governor, as he supposes, by mistake. We contend that there is no necessity of his referring to the order of the Governor. He reported back to the Governor, according to the testimony of Aragon, as to what he had done, and Miranda says he returned the act of juridical possession, which was filed in the archives with the grant papers. Aragon says that the order which came to Salazar through Miranda remained in the justices' archives. Both Aragon and Miranda were dead when this case was tried. Their testimony was taken in the year 1873, Aragon's before the

Surveyor General and Miranda's on a commission issued by the Surveyor General.

Francisco Trujillo, a son of the grantee, Ventura Trujillo, was present when the possession of the land was delivered. He says that the alcalde, his secretary, and his father, the grantee, all stated that the possession was given by order of the Governor. Encarnacion Lopez was also present, herding sheep at the place, and heard them make the same statement. Pascual Baca states that everybody so stated, that the land was given by order of the Governor. Besides, that the witnesses, Pascual Baca, Encarnacion Lopez, Jose Benito Martinez, Francisco Trujillo, Juan Bautista Lucero, all state that the land was always acknowledged and respected by every one as the property of Ventura Trujillo, his heirs and assigns.

Taking all this together, it is hardly possible to believe that there was not a grant made. Salazar would not probably have undertaken to make a grant on his own responsibility. The laws of Mexico were very plain, and were apparently well known. Governor Armijo, as history tells us, was a very arbitrary man. He was a dictator, it might be said. He was the entire government. He did not allow his subordinates to usurp authority, and they would never have dared to do it. The Supreme Court of the United States, in The United States vs. Arredondo, 6. Pet., 729, says:

"The public acts of public officers purporting to be exercised in an official capacity and by public authority are not to be presumed to be usurped, but a legitimate authority, previously given or subsequently ratified, which is equivalent, must be presumed."

This authority is also quoted on page 340 in the Castillero case, as contained in the opinion of Judge Hoffman, of the District Court of California. The discussion in 6 Peters is quite extensive, and is to the same effect.

The claimant does not contend that Damasio Salazar as justice of the peace or alcalde could have made this grant, but he was a public officer. He undertook to act, and if there was authority for the grant to be given to the grantee he was the proper officer to do it. In delivering the

possession of granted property in that jurisdiction, he being the alcalde, and being the only person who could deliver the possession juridically, to that extent he acted in the scope of his authority, and under the decision quoted from the Supreme Court, a legitimate authority, previously given or subsequently ratified, must be presumed; but we do not have to rely upon presumptions; we have the positive fact that the grant was made by Armijo, the proper authority, as shown by Miranda, Aragon, Francisco Trujillo, Encarnacion Lopez and Pascual Baca, and the fact that it was so reputed and recognized by every one as having been so granted, and as being the property of Ventura Trujillo, his heirs and assigns. But the land court, by a majority of three against two, rejected the claim and dismissed the petition. Speaking through Associate Justice Fuller, of that court, and after reciting portions of the evidence, he says:

"If these facts (meaning the facts set out by the evidence as given) stood alone and without any explanation or contradiction, possibly the court might feel constrained to confirm the grant as prayed for in the petition, but the petitioner has himself offered in evidence a paper marked 'Plaintiff's Exhibit A,' which he alleges is the certificate of the execution of the Governor's order by the Alcalde Salazar, and it becomes our duty on the threshold of this case to place a construction upon that paper."

The court then say through Justice Fuller, speaking of said exhibit "A": "It does not profess to be in terms anywhere throughout the paper the execution of the Governor's order, but the action of the Alcalde Salazar. On the contrary, its whole frame and structure indicates that it was an independent action taken by the alcalde himself. He recites that the petitioner was there present and made his petition for the land. He goes on then and declares that he had adjudged that the petitioner had meritorious grounds for making the application. He then declares that his finding on the petition was based upon meritorious grounds, and that he had granted him, by donation, the lands with the boundaries petitioned for, and he declares that he did this in obedience to the supreme decrees and the

laws of the land. He then declares, further, that he pointed out to the petitioner the boundaries of the grant which he made. He does not anywhere allege, nor can it be inferred from what he states, that he ever put the petitioner in juridical possession of the land according to the customs of the country, but as we construe it throughout the whole document, he is acting on his own motion, and he alone made the grant. Now against the evidence of this writing is the mere memory of the Secretary of the Territory, and, as stated before, without any note or memorandum at all, and that testimony was given thirty years after the alleged transaction, and the testimony of Aragon, in which he offers no explanation at all for the omission of the document which it is stated he had prepared, at the instance of Salazar, tending to show the execution of an order of possession, simply saying that the same was omitted by mistake. To such recollections as these the court is unable to give the construction asked for by the petitioner, upon the above named document which he presented."

It would appear from this that the court apparently found enough on which to confirm the grant if this act of juridical possession had made any reference to the fact that it was issued or made in conformity with the granting decree of the Governor. Two of the court out of five were of the opinion that there was sufficient out of which to make a confirmation, so that this decree of the land court is rendered by a majority of only one, and that majority of one, apparently rejecting the grant upon a single proposition, that the juridical possession made no allusion to the granting decree.

There is nothing in the law of 1824, or the regulations of 1828, which required the certificate of the act of juridical possession to refer in any manner to the granting decree.

The court will notice that there is an expression in this act of juridical possession which must refer to the granting decree, if it refers to anything, and that is, where the alcalde recites, "Acting in conformity with the supreme decrees," etc. What were the supreme decrees referred to? The decree of the Governor granting the land was one thing, and it also contained a provision or decree directing

the party to apply to the alcalde to place him in possession, or directly designating a certain alcalde who was directed to place him in possession, as the testimony shows. I take it that the decree in this case, instead of directing Trujillo to apply to the proper alcalde, it at once directed Damasio Salazar, the alcalde, to place Trujillo in possession, so that there were two decrees issued from the Governor, who was the supreme authority over this alcalde and all others; as before stated, he was the entire government of New Mexico, and was the supreme authority, and his decrees were the supreme decrees. The word supreme decrees can refer and must refer to the decrees made by the Governor making the grant and directing the Alcalde Salazar to give the possession. It cannot refer to the laws of Mexico with as much propriety as it can to the decrees of the Governor, because under the decree of the Governor the alcalde would have the right to do just what he did. Under the laws of Mexico he would have no such right unless the decree of the Governor granting the property intervened. It is not to be presumed that the officer has acted illegally or usurped authority, when it is possible for him to be acting within the scope of authority; that authority must be presumed, and when there is anything in his act which can be construed to sustain him, as acting within the scope of authority, that construction must be put upon it. The majority of the court, however, through Associate Justice Fuller, seems to dwell upon the fact, as the opinion says, that Trujillo petitioned the alcalde for the land. The alcalde says he solicited the place. If Trujillo had petitioned the Governor and the Governor directed him to go to Salazar, and in his decree directed Salazar to give the possession, he certainly would have applied to Salazar and solicited him to complete the grant. It was the universal custom in this territory for the Governor to deliver the grant to the grantee and tell him to whom to go. Sometimes the decree itself would tell him to apply to the proper alcalde; other times the decree would direct the alcalde by name; but in either event, the grantee always carried the decree to the alcalde and solicited him to give him the possession of the land. There is nothing in the

recital of this juridical possession inconsistent with that practice. It says that he was present personally soliciting the place. He was still a solicitant for the place until he was actually placed in possession of it. The customs which prevailed in this territory and in California had established the regulations for colonization of the territories of November 21, 1828, in section 3 thereof, provided:

"The political chief shall proceed immediately to obtain the necessary information as to whether or not the conditions required by said law of the 18th of August are found in the application, both as regards the land and the applicant. Either that this latter be attended to simply or that he be preferred, and shall at the same time hear the respective municipal authority as to whether any objection or not is found to the grant."

Evidently the Governor had directed Salazar, who was the chief municipal authority of that demarcation, to first ascertain those facts, and if he so found them to complete the grant by giving the possession. And Salazar says that he finds the petition just, or that it was based on meritorious grounds, as the courts say, he made the donation, in conformity with the supreme decree, so that the petitioner as a good compatriot might make use of it, observing the requirements which the laws provide, and certain other things stated. Is there anything inconsistent in the requirement of the third section of the regulations of 1828 and what Salazar did? It will be observed that Salazar makes use in his actual juridical possession of the word decrees when he speaks of authority under which he was acting, and he makes use of the word laws when he speaks of the duty of the grantee, so that the word decrees and the word laws could not be used in the same sense. Mexican laws were sometimes called decrees; the Governor's decree making a grant was never called a law, but always called a decree. The courts say, in their opinion, that Salazar does not allege, nor can it be inferred from what he states that he put the petitioner in possession, according to the custom of the country. There was no requirement of the regulations of 1828, which required him to make such statement in the act of juridical possession.

Section 8 of said regulations provides that a document shall be signed by the political chief, and it shall be issued to serve as a title to the party in interest, it being stated therein that the grant is made in entire conformity with the provision of the laws, in virtue of which the possession shall be given.

When the juridical possession is construed and compared with the regulations before mentioned, it will be seen that Salazar evidently must have referred to the decree of the Governor when he referred to the *supreme decree*. But it makes little difference whether he referred to the supreme decree of the Governor, or any other supreme decree, or used an idle phrase; it is a fact notwithstanding, independent of any recital of Salazar's in his act of juridical possession, that the grant was actually made by the Governor. This is shown by overwhelming testimony, and it is not contradicted by a single witness or a single fact, except the assumption that Salazar did not refer to it, and therefore it did not exist, and the further assumption that it not being found in the archives, therefore it did not exist, and this brings us to the second proposition to be considered.

II.

Was this grant in the archives, and has it been lost? Miranda, the secretary, against whom there has never been a scintilla of suspicion of dishonesty or crookedness, not only says that the grant was made and signed by Armijo and himself, but says that the original papers and the return of the alcalde were duly deposited in the archives of New Mexico and remained therein under his charge as public records, he being at that time the legal custodian of said archives and records, by virtue of his office as secretary. There can be nothing plainer than this, that the grant was actually in the archives, under his charge, he being the custodian. There can be no uncertainty of memory. He does not hesitate or express a doubt as to that fact; besides, he is corroborated by Aragon, who says that the alcalde reported his doings and sent them to the Governor; also,

Francisco Trujillo states the same thing. There can be no doubt, as we contend, of the grant being in the archives, but the authorities seem to require claimant to go a little further and show a loss of the grant. It could not be expected that a person residing a hundred miles away from the capital in those days, and from the archives, could constantly keep his eye upon the papers in the archives affecting his title. He would not be expected to look after them until he should have some use for them; nor would he be the custodian of them: nor could he direct the manner of keeping of them or the care and attention which should be bestowed upon them. That duty belonged to an officer of the government, and under the arbitrary manner in which the Spanish and Mexican governments were conducted private individuals would be loth to pry into the business of those officers. All that can be said or required of the claimant is to give some probable reason for the absence of the documents of the archives.

On page 57 of the transcript it is stipulated that a portion of the Spanish and Mexican archives in this Territory of New Mexico were lost, sold or destroyed in the year 1870, containing grants and other papers. This claim was first presented to the Surveyor General for approval some time after the second of December, 1872, as will be seen by the record, page 104. In the stipulation on page 57 it was further stipulated that an index made by one Antonio B. Vigil completed in the year 1851, and entitled a general index of all the documents of the Governments of Spain and Mexico up to the year 1846, contained no mention of any grant of the Ojo del Apache; but it is expressly reserved in said stipulation by the claimant that while he admitted that the index contained no such mention, yet that he did not admit that it contained all the papers which were in the archives, and it was further admitted that that index did not contain any reference to the Cubero Grant, that is, the grant in which the case of The United States versus Chaves 159 U. S. 462, et seq. was founded, and which grant in that volume was sustained by this Court, although the papers were lost, or could not be found.

This point has been judicially determined by this Court

in the case of U. S. vs. Chaves, 159 U. S.., 463, in which this Court says:

"The claimants likewise proved, by quite a number of witnesses residents of the Territory of New Mexico, that about 1870 a considerable portion of the archives of that Territory, containing documents relating to Mexican grants, made to lands within that Territory, were lost; that these papers were deposited in the territorial library where some of the witnesses had seen them in 1868 and 1869; that they were sold as waste papers by the librarian Bond and were scattered through the country. Many of these were Spanish documents and pertained to grants of land. When the Governor of the Territory heard that there was complaint made by the people of this treatment of public archives, he made efforts to get them returned, but the evidence is clear that many of them were destroyed and lost. The claimants also called as a witness, William M. Tipton who had been employed for several years in the office of the Surveyor General of the Territory of New Mexico and had charge of the Spanish and Mexican archives. He testified that the books and records in that office purporting to contain the registry of land grants by the Spanish and Mexican governments, prior to the time the Government of the United States took charge are in a disconnected fragmentary form, and that one of the most important books containing a record of grants, made by the Spanish and Meican governments, is missing, and is supposed to have been stolen. He also stated that there was not in the Surveyor General's office any index of the dates, lists of original expedientes or warrants of title to Spanish and Mexican grants * * * In view of this large body of uncontradicted evidence we think that the court below was plainly right in finding that the claimants had satisfactorily sustained the allegations in their petition. Not only was their evidence of the existence of an original grant by the government of New Mexico and a loss of original records sufficient to justify the introduction of secondary evidence, but there is the weighty fact that for nearly sixty years the claimants and their ancestors have been in the undisturbed possession and

enjoyment of this tract of land. The counsel for the government indeed contend that the Court of Private Land Claims and this court have no power to presume a grant upon proof of long continued possession only; that this power is confined to confirming grants lawfully and regularly derived from Spain and Mexico.

"It is scarcely for us to consider such a question, because as we have seen, there is ample evidence from which to find that these settlers were put in juridical possession under a grant from the Governor of New Mexico, who under the laws then in force had authority to make the grant.

"However, we do not wish to be understood as undervaluing the fact of a possession so long and uninterrupted as it was in this case. Without going at length into the subject, it may be safely said that by the weight of authority, as well as the preponderance of opinion, it is the general rule of American Law that a grant will be presumed upon proof of an adverse exclusive and uninterrupted possession for twenty years, and that such rule will be applied as a *presumtio juris et de jure* wherever by possibility a right may be acquired in any manner known to the law."

This decision quoted is a judicial determination of the facts of the loss of a part of the archives containing land grants in New Mexico, the proof that the grant papers were in the archives is uncontradicted, and conclusively established by Guadalupe Miranda who is corroborated by the evidence of Rafael Aragon, Francisco Trujillo and Encarnacion Lopez, and this fact is not disputed by any evidence in this case. The stipulation in addition to the official adjudication thereof as aforesaid, is to the effect that the archives were lost in 1870, containing grants and other papers, and this court in the case cited, say: "Not only was there evidence of the existence of the original grant by the government of New Mexico and the loss of original records sufficient to justify the introduction of secondary evidence," etc.

Claimants therefore insist that they have proven the existence of the grant by uncontradicted evidence; that it was in the archives and by the evidence of Sidebottom,

record page 25, it is shown that the papers of the grant are missing from the archives, and the land court on page 27 say: "Mr. Catron as far as we are concerned we think you have shown that the paper in question is not in the files in this case. We understand it has been the duty of the Surveyor General for the last forty years to get these papers together. We understand that you seek to prove the absence, loss or destruction of the original grant made by the governor. We think you have laid a foundation for secondary evidence."

Thus it appears that the loss from the archives was established, and its existence having been positively proven by Miranda and others, and that it was filed in and was a part of the archives, under the charge of Miranda, we insist that there is no evidence or presumption on which the existence of the grant can be defeated or overcome.

III.

The third point in this case is like the one in the case of U. S. versus Chaves et sup. For more than twenty years the grantee and those holding and claiming under him, had actual, adverse, continuous, exclusive, open and notorious possession, claiming the same under the act of juridical possession and a grant made by the governor of New Mexico. The court will observe that in the case of U. S. vs. Chaves, 159 U. S., on page 464, the courts say: "It is the general rule of American Law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years, and that such rule will be applied as a *presumtio juris et de jure* whenever by possibility a right may be acquired in any manner known to the law."

Claimant contends that not only is there a possibility that the grantee had acquired a right by a grant from the government, but there is positive proof that he had done so, and that although the act of juridical possession may not refer to the grant, yet it is shown that it was a possession given under the grant. The proofs that the alcalde, who gave the possession was a very ignorant man in regard to

education, and although he had a secretary to do his writing, it is likely he dictated to him the substance of the act of juridical possession. He was a man who was noted for his self importance and arbitrary character. History has given his character which will be found in Kendall's Expedition. He was the officer who arrested the members of that expedition at or near Anton Chico in 1841 and carried them to Santa Fe, and from there by order of Governor Armijo, to Mexico. There is nothing inconsistent as claimant insists, between the facts set out in the act of juridical possession and the fact that the governor made a grant and directed Salazar to inquire into the facts and to give the possession, as was required by the regulations of 1828. Those regulations required an investigation to be had, and permitted the grant to be made if the facts were found to justify. The proof is the grant was made and of itself that would presume every preliminary step to have it consummated, but Armijo could also just as well have made the grant and directed Salazar to make the necessary investigation as to the character of the land, whether it was fitted for the purposes asked for, and whether the party was a proper party to receive it, and if he found such to be the fact, that he would place him in possession and thereby consummate the grant. His action was reported back to the governor and the grant and his report were filed in the archives and there was no disapproval of his action as far as the evidence shows. In fact there was none.

In addition to the fact that the grant was actually made and juridical possession delivered, and the grantee entered into possession, himself and his family, and resided thereon, it is shown by a very great preponderance of the evidence that he and those who held under him continued to hold actual, notorious and continuous possession for more than twenty years thereafter.

Pasual Baca, a witness for claimant (p. 63 et seq.) says when asked in regard to Ventura Trujillo, in 1846.

"Q. Where was he living at that time? A. He was living at Ojo del Apache.

Q. When did you first see him at Ojo del Apache? A. In 1840.

Q. What was he doing there? A. He lived there. He had a little ranch in '40.

Q. What improvements had he there, if any? A. He had a little shanty and he had planted corn fields and a little garden; that is what he had.

Q. Had he any other property there; if so, what? A. Yes, he had furniture.

Q. Any animals? A. Yes, goats and horses and burros; I do not remember whether he had any cattle or not.

Q. Where was he, if you know, in the year 1842? A. He was there yet and afterwards.

Q. How long did he remain at Ojo del Apache? A. About ten or eleven years.

Q. After what date? A. 1840.

On page 66 the same witness testifies: "How long have you known this tract of land? A. I was born there and live there now.

Q. Do you live within the tract of land or close to it? A. I lived near it very many years, and I live near it now. I live nearly above.

Q. You said Ventura Trujillo occupied it for about ten or eleven years? A. Yes.

Q. How did he occupy it? A. Something like that; he lived there; he had his ranch as I have stated.

Q. What family, if you know, did he have with him? A. He had a family; sons, also women.

Q. Were there any other settlements in that vicinity? A. A little below there at Lagunita.

Q. During that time that Ventura Trujillo lived on this property, state whether anybody else, if you know, claimed to own or possess the property besides Ventura Trujillo, possessed under him, or any part of it? A. During the time Ventura Trujillo occupied it I did not hear of anybody claiming it.

Q. While Ventura Trujillo was occupying it, how was it respected and regarded by the people in that section of the country? A. They respected it as the juridical possession of Ventura Trujillo.

Q. How was it regarded as to it being owned by him? A. As having been granted to him by Governor Armijo.

Q. As having been granted by Armijo and Salazar? A. Yes, because he lived there.

Q. Did you have any intention of settling upon it? A. Yes, I had.

Q. What was the reason you did not settle on it? A. I respected it because it belonged to somebody else. I knew it belonged to somebody else.

Q. Did you know who it belonged to? A. To Ventura Trujillo."

On page 72, redirect examination:

"Q. When Bautista Lucero bought the grant from the heirs of Ventura Trujillo, what did he do with it? A. He sold it to Mr. Taylor.

Q. Between the time he bought it and when he sold it to Taylor, what did he do with it? A. He lived upon it. He built a house there.

Q. How did he occupy it and with what? A. He moved there with his family and enlarged the house built by Ventura Trujillo.

Q. What use did he make of it while he lived there? A. He lived there and planted the same pieces of land Trujillo had. He had goats and stock there.

Q. What did he do with his stock he had there? How did he manage them? A. I do not know.

Q. Did he keep them up or graze them out on the property? A. Yes, he pastured them on the property.

Q. To what limits did he pasture them? A. Within the property. It is very large.

Q. How close did he go out to the boundaries? A. I saw him all the time within the boundaries.

Q. Always in one or different places? A. On different points of the grant, or different sites and in every direction, on every side.

Q. How many animals did he have? A. I do not know.

Q. How long did he occupy the land, from the time he purchased it until he turned it over to Taylor? A. Nearly nine or ten years. Maybe a little less, I do not remember.

Q. When he sold to Taylor, what did Taylor do with the property? A. He sold it to Mr. Hays.

Q. Before he sold it to Hays what did he do? A. He lived on it.

Q. How long did he live on it, before he sold it to Hr. Hays? A. Nearly nine or ten years.

Q. What use did he make of it besides living on it? A. He had stock, he had wagons and oxen, he had a trail of wagons.

Q. During the time Juan Bautista Lucero lived on the property, and occupied it ,did any one else live on it and occupy it? A. He was a relative of his (evidently referring to Ventura Trujillo) Francisco and Pablo (referring to sons of Ventura Trujillo), was with him. He was also my uncle on my mother's side.

Q. Was there anybody else living on it and using it then? A. I do not know.

Q. During the time that Taylor occupied and lived on the property, did any one else besides Mr. Taylor occupy it? A. No. Those who lived on it left it.

Q. To what extent did Taylor occupy the property outside of the house where he lived? A. He had a great deal of stock.

Q. Where did he pasture his stock? A. He pastured where Solano lives now. He pastured where these Americans live now and he pastured towards the mesa and everywhere.

Q. Did he pasture all over the boundaries inside of the land or not? A. I have seen his stock in all the grant.

Q. After Taylor sold to Hays what did Hays do with the property; after he bought it? A. I saw a great deal of his stock and sheep, and I saw his horses and cattle and his furniture.

Q. When did his family first go there? A. Since he bought from Mr. Taylor. * * * *

Q. How has Mr. Hays occupied the property? A. That way as having bought it from Mr. Taylor.

Q. After Juan Bautista Lucero bought from Ventura Trujillo, how was the property regarded and respected as to ownership by the people generally? A. It was regard-

ed and respected as the property of Juan Bautista Lucero.

Q. After Lucero sold to Taylor, and Taylor went to occupy it, how was the title respected? A. With respect; a great deal more than as belonging to Mr. Taylor. Sometimes he would not allow us to water there.

Q. After Taylor sold it to Hays, how was it regarded and respected—the title? A. As of Mr. Hays."

Encarnacion Lopez, another witness for claimant, on page 77, testified:

"Q. After the property was delivered to Don Ventura Trujillo, what did Don Ventura Trujillo do with it? A. He lived on that place while I was herding his sheep.

Q. How long did he live there, if you know? A. I was with him five years and a little over.

Q. What did Ventura Trujillo have there on the property, if you know? A. He had his stock, horses, goats. He planted on that place.

Q. How many goats did he have? A. I do not know how many, but he had a large herd of goats; I do not know the number.

Q. How many horses did he have? A. He had quite a number; about fifteen or twenty. He was very fond of traveling.

Q. Had he any cows or cattle on that property. A. When I was there I did not see any cattle.

Q. Where did he pasture these goats and horses? A. Within the place

Q. How far out towards the boundaries? A. I do not know if his horses went outside of the boundaries or not.

Q. During the time that you were there and saw him occupy it, was there anybody else occupying or claiming any part of that property? A. No.

Q. Now, how was that property respected and regarded as to ownership by the people in that vicinity and neighborhood during that time that Ventura Trujillo was there and occupied it? A. It was respected as belonging to the deceased Ventura Trujillo.

Q. Who claimed to be the owner of the property? A. Nobody; I never heard of anybody else.

Q. Did Ventura Trujillo claim it? A. It was recognized as his.

Q. Did he claim it or not? A. Yes; he possessed it.

Q. When you left there, who was in possession of the property? A. He.

Q. Since you went away from there, have you seen that property? A. Yes; I went there afterwards.

Q. How soon afterwards was it that you went to the property the first time? A. I do not remember very well, but three or five or six years; something like that. (This witness testified on page 76, folio 99, that he had known the property since it was delivered to the deceased Ventura Trujillo in 1842.)

Q. When you went back to the property, who, if any one, was in possession of it? A. I did not go to the house. I do not know whether his children or nephews, but some one possessed it for a good deal of time afterwards.

Q. Do you know if anybody else after Ventura Trujillo succeeded to the possession of that property after Ventura Trujillo? A. After he died I knew the people who lived on it.

Q. Who was there after his death? A. Bautista Lucero and Crecencio Baca, deceased.

Q. Were you there while they were in possession of the property? A. I was there upon occasions at the house with them.

Q. What claim, if any, did they make to the property? A. They said that they had bought from the heirs, but I do not know.

Q. They claimed the property by purchase? A. Yes; they recognized it as belonging to them by purchase.

Q. Now what were they doing with the property when you were there? A. I saw them in possession. They were living on it, and they were planting there.

Q. Did they have any animals or stock? A. They had a few goats. I did not see any other kind of stock.

Q. Did you go around over the property when you were back that time? A. I went to Las Vegas, and on my return they had a house. (Pascual Baca, at the top of page

73, testified that Lucero enlarged the house built by Ventura Trujillo.)

Q. Did you stop in that house? A. Yes.

Q. You did not see what they had outside of the road at the house? A. They had planted there corn and beans and a garden and chili and onions, and also cantaloupes.

Q. Do you know how they occupied that portion of the property that was some distance from the house? A. They said they had bought from the heirs. I did not see that, but they said they had possession as coming from the heirs."

Jose Benito Martinez, another witness for claimants, on page 80 et seq, testified that he knew Juan Bautista Lucero and also the property in question.

"Q. When did you first know that property? A. In 1854.

Q. Who was in possession of it at that time, if any one, to your knowledge? A. To my knowledge, the wife of Ventura Trujillo, deceased.

Q. How was she occupying, if you know? A. She had it loaned to Juan Bautista Lucero and to my uncle, Crecencio Baca.

Q. Was she there, or were they there? A. The widow of Ventura Trujillo, Juan Lucero and Crecencio Baca were there.

Q. That was in 1854? A. In 1854 or 1855.

Q. How long did they stay on that property, if you know? A. About eight or nine years, perhaps.

Q. Did they occupy the property long after they acquired title to it? A. A man by the name of Lopez came to see the property by order of the woman.

Q. Where were these men living, Baca and Lucero, at this time? A. At the Apache Spring.

Q. While they were there did they occupy it eight or nine years as their property or as the property of the widow? A. In 1855 this Isidro Lopez went there to see some stock that they had there. I was then herding goats there with my uncle Crecencio, and a brother of mine was cutting timber in the Canoncita. Then this Isidro came and my uncle Crecencio told him that the boy was cutting

timber there. Then Isidro told me to go and tell my father not to cut timber there. I went at night and came back the next day, and I told him that my father said that the timber was already cut, and wanted to know what he should do with it. Isidro said, bring the timber and cut no more. That is the way I came to know that it belonged to that woman.

Q. Now where was the place that timber was cut—within or without the grant? A. It was within the grant.

Q. Who did they claim that grant belonged to at that time? A. To Ventura Trujillo, deceased.

Q. Was his widow living at that time? A. Yes.

Q. Where was she? A. She was at the house. I do not know whether at San Miguel or Tecolote.

Q. Who were these two people who were there in possession at the time? A. Cresencio, my uncle, and Juan Bautista Lucero.

Q. What was your uncle's other name? A. Crescencio Baca.

Q. Who was Isidro Lopez, the man you mentioned? A. He was son-in-law of Ventura Trujillo, deceased, and son of that woman.

Q. Did you ever see the property after that time? A. All the time from the year 1854 until now.

Q. Did Juan Bautista Lucero and Crecencio Baca at any time cultivate that property as their own, to your knowledge? A. They bought it in the year '65.

Q. In what year did they buy it? A. '65.

Q. Who did they buy it from? A. In the year '55.

Q. From whom did they buy it? A. They bought it from Juan Lopez, the son of that woman.

Q. After they bought it, how long did they remain in possession of it? A. About eight or nine years.

Q. How did they occupy it? A. My uncle Crecencio had a little store there.

Q. Did they live there? A. They had some planting done there and gardens and orchards.

Q. Did they or not live on it? A. They lived there, also their families.

Q. Had they any animals or live stock? A. No; they

did not have any stock. My uncle Crecencio had a few goats.

Q. Who succeeded them in possession of the property, if you know? A. John Taylor.

Q. How did he occupy the property? A. He bought it from Juan Bautista Lucero.

Q. How long did he occupy it, and in what manner did he use it—Mr. Taylor? A. He had a station there. He had wagons. He was using it as a station.

Q. Did he have any animals or live stock there? A. He had wagons and cattle and horses and oxen.

Q. Where did he pasture them? A. Within the same place.

Q. During the time that Juan Bautista Lucero and Crecencio Baca occupied the property, how was it regarded and respected by the people generally in that locality as to ownership. A. They were recognized and respected as the owners of the land.

Q. After Mr. Taylor bought it, and went into possession and occupied it, how was it regarded by the people in that locality? A. They respected the same way as belonging to Mr. Taylor."

Francisco Trujillo, another witness for claimant, on page 83 et seq, testified as follows:

"Q. Do you know where the Ojo del Apache is? A. Yes, I know it because we had a farm there.

Q. Where did your father reside at the time the grant was made to him? A. In San Miguel.

Q. Did he ever reside on the grant? A. Yes.

Q. How soon after Damasio Salazar delivered the grant did your father go there to live? A. We lived there about thirty years.

Q. From what time to what time did you live there? A. I do not know the time that we stayed there, because the Indians drove us away, but my brothers went there to the property. * * * * *

Q. When was it that your father lived on this grant? A. Prior to his death.

Q. How many years prior to his death? A. I have stated that about thirty years.

Q. How long before he died did he go to San Miguel to live? A. I have said that he lived there since he was born.

Q. When did he live on this property? A. He lived there in the year 1842.

Q. How many years after the year 1842 did he live there? A. We lived there since the grant was made. We transported ourselves immediately there.

Q. You mean to say that as soon as the grant was made you went to Ojo del Apache to live? A. Yes.

Q. How many years did you stay there after you went there? A. We stayed there about thirty years.

Q. How many years after this grant was made was it until your father died? A. About ten years.

Q. When your father died, who, if any one, was in possession of the grant? A. One of my brothers.

Q. What was his name? A. Isidro Lopez.

Q. In what manner did your father possess the property? How did he occupy it? A. He had mares, and he had a little farm, and he had goats, and he made a planting there also.

Q. At what point on the grant was this planting? A. Near the spring.

Q. The Apache Spring? A. Yes.

Q. Where were those lands that he was cultivating? A. A little below Apache Spring.

Q. How close to the spring? A. About 15 yards.

* * * (Page 87.)

Q. After your father's death, you say your brother remained in possession of the property? A. Yes.

Q. How long did he stay in possession of the property after your father's death? A. We remained there about three years.

Q. Were you with him? A. Yes.

Q. How did you and your brother occupy the property after your father's death. A. By farming it and fl e stock.

Q. How many animals had your father on this property from the time Salazar gave him possession of it to the

time of his death? A. He had about thirty horses, sixty goats and six cows.

Q. Where did he pasture these animals? A. From the Ojo del Apache toward the hills.

Q. In every direction? A. In every direction.

Q. How did he pasture them with reference to the boundaries of the grant? A. Within the boundaries.

Q. How close to the boundaries? A. The boundaries were very far from the place where he pastured.

Q. Did the animals go out at any time towards the boundaries? A. No, they were all shepherded.

Q. Did the shepherd drive them where he wanted to or in any particular place? A. He drove them wherever he wanted to.

Q. Do you know how this property was respected and regarded after Damasio Salazar gave possession of it to your father, as to whom it belonged, by the people generally? A. Yes.

Q. How was it respected, as the property of whom? A. After my father died it was the property of my brother.

Q. During your father's lifetime, as whose property? A. As my father's.

Q. What became of the property after you and your brother ceased to occupy it? A. We kept watching it, and we kept going there to live after it went to my brothers.

Q. What did you do with it finally? A. We again went to live there.

Q. How long did you live there that time? A. We lived there about fourteen years. (This evidently refers to the time about ten years of his father's residence and three years of his and his brother's.)

Q. Who succeeded you in the property, if any one? A. My brother Isidro, and then it was sold to Luis Sulzbacher.

Q. Did you know Juan Bautista Lucero? A. Yes.

Q. Did you know Crecencio Baca? A. Yes.

Q. State whether or not they ever occupied the property. A. Yes.

Q. From whom did they obtain possession of the

property? A. I think from a brother of ours. I think he had sold to them.

Q. How long did they occupy it? A. I do not know how long they occupied it. They lived there a long time.

Q. How did they occupy it? A. They had a farm and animals.

Q. At what particular place did they reside? A. At the spring itself. They had houses there near the spring.

Q. Did they or did they not reside there? A. Yes.

Q. Had they families? A. Yes."

May Hays, the claimant, also testified, page 94. "Q. How long have you known the property you are claiming? A. Twenty-five or thirty years. * * (Page 95.)

Q. Who occupied the property, if any one, when you first knew it? A. When I first knew it one Juan Bautista Lucero occupied it. * * * *

Q. Now when you first knew Juan Bautista Lucero as occupying this property, how was he occupying it, in what manner? A. He was cultivating and had a small body of stock.

Q. Do you know what claim, if any, he made in regard to the land? If so, what was it? A. He claimed it through the widow. He married the widow of Trujillo.

Q. Did he claim it as his own or hold it for some one else? A. He claimed it as his own property.

Q. The property that is within these boundaries which you mentioned? A. Yes.

Q. How long did he occupy it to your knowledge? A. He occupied it about five or six years.

Q. And who succeeded him in the occupation of it? A. Mr. John L. Taylor.

Q. How did Mr. Taylor occupy it. A. He occupied it by living on it and grazing stock. Grazed stock on it.

Q. To what extent did he graze stock on it? A. Well, pretty much all over. He had a herd of sheep. He had a lot of oxen and some stock cattle.

Q. What claim, if any, did he make to the property? A. He claimed the whole boundaries as I have mentioned as his property.

Q. How long did he remain in possession of it? A. I cannot recollect exactly. It was about ten years.

Q. Who succeeded Mr. Taylor in the possession of the property? A. I did.

Q. How long have you had possession of it? A. I had possession, as well as I can recollect, since '76. The latter part of '76 or the fore part of '77. I cannot recollect which year.

Q. How have you occupied it? A. By grazing stock and living on it.

Q. To what extent have you grazed stock on it? A. I have grazed my stock all over it.

Q. What claim, if any, do you make to the property, while you have had it in your possession, as to whether or not it is your property? A. I hold it as my property by purchase from Mr. Taylor, and claim just the same limits as he claimed.

Q. Did you purchase from Taylor? A. I purchased from Taylor and Luis Sulzbacher."

On cross-examination May Hays testified: "Q. Quite a number of people there claiming under the government? A. No, there are not many. Three or four families, or five families.

Q. Inside of the limits of this tract you have mentioned? A. Yes.

Q. Well, do they cultivate any? A. Yes, small spots.

Q. Have any stock? A. They have some little stock.

Q. Where does their stock graze? Just where your stock graze? A. Just as my stock graze.

Q. Are their ranches near the spring or further south? A. There is one party south and another southwest. There is two brothers, Americans, that live south of the spring.

Q. How far from your place? A. It is about a mile and a quarter or a half to their house.

Q. What are their names? A. Adlons.

Q. Any one else that lives there on the tract of land under the government? A. This man named Solano and two or three families, that I do not know their names.

Q. How far do they live from you? A. They live about two miles.

Q. Do they plant and have herds just like the others? A. They have herds and plant some little.

Q. Who else is living on the grant? A. A couple—three men named Montoyas.

Q. They are claiming under the government, too? They claim under—well, I can't say.

Q. But they do not claim under your property? A. No.

Q. How far are they from the spring? A. Two or three miles from the spring.

Q. Inside the grant? A. Inside the grant.

Q. Who else, if anybody? A. Two men and their families. But I do not recollect their names. They have only been there a year or so.

Q. They cultivate, do they? A. I see they have some land broke up this season. I do not know that they cultivate any. They broke up some land this season. I do not know if they planted it.

Q. How far are they from you? A. About three miles.

Q. Some of these parties have been living there for quite a number of years? A. Yes, those parties of Montoyas have been living there, I suppose, thirty or forty years.

Q. Living there before you went there? A. Yes.

Q. Some of these other people have been living there for some time, have they? A. Eight, ten or twelve years.

Q. None except the Montoyas have lived there more than twenty years? A. No."

This testimony shows a continuous possession in Ventura Trujillo for more than twenty years, without any interruption of possession at all, and it shows a continuous possession down to the present time by the grantee and his successors in title, by residing on the same, cultivating small parts of it and grazing their live stock thereon, except a few people during the last eight or twelve years, and three persons named Montoya, who, Mr. Hays says, he supposes have been there thirty or forty years. Mr. Hays says he has known the property for twenty-five or thirty years; that he purchased it in the latter part of '76 or the early

part of '77, and took possession of it then, and these three Montoyas were there then, so that the only proof of the length of time the Montoyas were there is from 1876 or '77 forward, as Hays does not say he knows when they entered, but only supposes they entered thirty or forty years ago, and he does not know under what title they claim. It does not appear that they dispute his title, but, on the contrary, all the evidence shows that every one in that vicinity and that neighborhood respected and regarded the title of the grantee and his heirs and assigns to the property, and as belonging to them. This in our judgment shows a complete, perfect, adverse and continuous possession for more than twenty years, uninterrupted by any one, not even a trespasser. As against this testimony the defendant introduced Pablo Lucero, page 29, et seq, who testified as follows:

"Q. How long have you known the Apache Spring? A. I know it since the year '40.

Q. Just state how you have known it? Whether or not you were ever at the spring, and how many times, and all about it. A. The first time I went there I was passing by; then I went to the spring to take possession of it, being asked to do so by a man named Rafael Salazar.

Q. Between the time you first knew the spring, did you go there at any time? A. I was not there except in passing by the spring, before I took possession.

Q. Did you pass by the spring once, or more than once, or how many times? A. I remember one or two times before that time. * * * * *

Q. What was the condition of the spring as to your knowledge from the year '40 till the time you took possession? Was there any house there? A. There was no house there.

Q. Was there any land cultivated or broken? A. No.

Q. Was there any one during that time living at the spring? A. No.

Q. When did you first hear of Ventura Trujillo? A. About the year '55, when I went to the place to take possession.

Q. Was Ventura Trujillo living there then? A. No.

Q. Do you know where Ventura Trujillo lived previous to that time? A. Yes.

Q. Where did he live? A. In San Miguel.

Q. Did he ever live at Apache Spring? A. No.

Q. Did you ever see Ventura Trujillo? A. No, I did not know him.

Q. I believe you said you took possession in 1855. A. Yes.

Q. Just state how you came to take possession and who were your associates? A. I went to the Ojo del Apache Spring in company with Rafael Salazar, in company with other people. I remember only a part of the names of the other people. One of them was Jose Maria Martinez, and myself and Rafael Salazar and Jose Martinez, also Jose Abad and Gabriel Valencia.

Q. Were there any improvements of any character at the spring? Any houses, or anything of that kind? A. No.

Q. Were there any ruins of houses, or anything of that character left by people living there? A. No.

Q. Have you ever seen anything of that kind in passing the spring, previous to that time? A. No.

Q. Had you ever heard that Ventura Trujillo had any interest there? A. I did not know it before the time that I went to the place.

Q. Was Juan Bautista Lucero one of those who was with you in that enterprise? A. No.

Q. Did Juan Lucero live at this spring at any time? A. No.

Q. What improvement did you make at that spring when you went there with the others? A. We threw—made a—dug the earth for a reservoir, and we made a little ditch, and we carried the ditch to a place where we could irrigate with the water from the ditch at a little valley.

Q. When did you first know of any claim that Ventura Trujillo had to this property? A. At the time that we went to take possession of the spring.

Q. Previous to the time that you and those others went to the spring how was the spring used? A. The water from it ran through an arroyo.

Q. How was it used? A. The water was only used by travelers. They took it from the arroyo.

Q. Was any one pasturing at that place? If so, who? A. I know by information that they used it; ranched there during the winter.

Q. Did you ever see any cattle pasturing there? A. No."

It will be observed that this witness was only there in 1840, and then again in the year 1855. His cross-examination brings out clearly that when he was there in 1840 he was hunting animals, and only went down to the spring, took some water and rode away, and in the year 1855 he was there about twenty days, and between 1840 and 1855 was not there at all. On cross-examination he testified:

"Q. Was that the first time when you ever passed by this property, in the year 1840? A. Yes.

Q. You were then seven years old? A. Yes.

Q. Where were you going? A. I was hunting up some animals.

Q. How long were you at the spring? A. I just went down in the spring and took some water and rode away with the animal.

Q. Then you say the next time was in 1855, when you went there to take possession? A. Yes.

Q. What time in the year 1855 was it that you went there to take possession? A. I am not certain about it. I am not positive, but I think it was in autumn, during the autumn.

Q. Was it as early as September, or before September, or after September? A. It was about September.

Q. Did you go there to take possession for yourself or somebody else when you went there in 1855? A. I was asked by another person.

Q. Who? A. Rafael Salazar.

Q. Where is Rafael Salazar now? A. He is in Colorado.

* * * * * *

Q. When did you first know Juan B. Lucero? A. I did not know him.

Q. Did you ever know Juan Xeponuceno Lopez? A. No.

Q. You say you never knew Ventura Trujillo. A. No.

This witness was sixty-three years old in 1896, and lived at Puertecito, nine miles from the Apache Spring, and in the vicinity of where those parties all lived, yet did not know any of them. He further testified:

Q. What did you do when you went to take possession of the spring in 1855? A. To dig a ditch from the spring to a little piece of land that was susceptible of irrigation.

* * *

Q. Your intention was to cultivate it, was it? A. Yes, the piece of land.

Q. How many more were with you? A. About thirteen of us.

Q. Was that piece of land enough for thirteen of you to live on? A. I do not think so.

Q. You did not stay there, then, very long, did you? A. No.

Q. How long did you stay? A. About twenty days.

Q. Then you all went away at the same time, did you? A. Yes.

Q. And then never returned there to occupy the land? A. Never; except a man named Crecencio Baca. I know this from information in 1859.

Q. Crecencio Baca remained there, did you say. A. No, he also went away.

Q. What did you say about Crecencio Baca about the year 1859? A. He built a shanty there and sold some liquor.

Q. Was there any one else there but Crecencio Baca at that time? A. I do not know.

Q. Was Juan B. Lucero there with him? A. I do not know.

Q. You do not know much that took place there, then, aften 1855, do you? A. Not personally, but I know from information about the possession of Crecencio Baca.

Q. I do not want your information; I only want your personal knowledge. You did not see Crecencio Baca there, then; you only heard that he was there? A. I did not see him.

Q. And you really do not know that he did go there, of your own personal knowledge? A. No."

The court will observe that one or more witnesses for the claimant testified that Crecencio Baca and Juan B. Lucero were at the springs in 1855. Lucero had bought from a son of the grantee, and one witness said that the widow had loaned the place to Lucero and Baca, and that Hays testifies that Lucero married the widow of the grantee, and one witness says that they were all three there, the widow, Lucero and Baca, as the successors of the grantee and his heirs. The widow being one of his heirs, and this was in 1855, as shown by all the testimony, the very year, in the fall of which this witness, Pablo Lucero, claims he went there to take possession for Rafael Salazar. This witness on cross-examination further testified:

"Q. Of your own personal knowledge, you do not know whether anybody was on this property between 1840 and 1855, do you, of your own personal knowledge, without what other people told you? A. Yes, I know.

Q. You said that you were not there during that time; how could you know it except by information? A. I passed, traveled by that place several times before the year 1855.

Q. You said awhile ago that you only went there in 1840, possibly one time before 1855, did not you? A. Yes, but I was one time there.

Q. That is all the time that you remember that you were there, is it; that you are positive of it, before 1855? A. Yes.

Q. Then between the time when you was there, that one time, and the summer of 1855, you do not know who was at the property, of your own knowledge? A. No.

On redirect examination by the United States Attorney he testified:

"Q. How many times did you pass there between 1840 and 1855? A. I remember one time.

Q. Do you remember any other time? A. I do not remember.

Q. What year was that you passed there? A. In the year 1840.

Q. How many times subsequent to the year 1840. A. I only remember passing by one time.

Q. What year was that? A. In the year 1840.

Q. You never passed there between 1840 and 1855. A. No."

Thus it will be seen that this witness, some time in 1840, whether in the early part, middle or latter part is not shown, passed this spring, obtained a drink of water and went on. That he did not pass by there nor was he there from that time until the fall of the year 1855. It will be remembered from the evidence that Ventura Trujillo occupied the property ten or eleven years (his son says he died about ten years after possession was given him by Salazar), and then he evidently went to San Miguel, where he died. His sons stayed in possession of the property thereafter three years, and were driven off by the Indians. That must have been some time in the year 1854 or 1855, as Francisco says they occupied it fourteen years. Five sons went to the place with the father. Francisco also says that when the Indians drove them off, that is, when they went away, they kept watch of it and kept going back, but he says they were away about one year, so that very likely, or very probably it was during that year that this witness, Pablo Lucero, with Rafael Salazar, may have gone there to take possession, but the witness tells that when they went there they learned that the property was claimed by Ventura Trujillo, deceased, and that they only did a small amount of work, remained about twenty days, and left never to return; except one of them, Crecencio Baca, who was afterwards there under license from the widow and in company with Juan B. Lucero, evidently there under the title. This evidence, if it shows anything, does not show any such adverse possession as would interrupt the statute of limitations. The parties went there at a time when the owners had probably been driven off by Indians, remained a few days only, learned that the property was claimed by the grantee and his heirs and then left. That certainly was a recognition of the claim of the grantee and his heirs and a respecting of their rights. Otherwise, why did they leave and leave their improvements? This witness shows a la-

mentable ignorance in regard to the interested parties. His evidence certainly proves nothing against the claim or continuous adverse possession.

Defendant also called another witness, Juan de Jesus Armijo, who testified:

"Q. When did you first know the Ojo del Apache? A. In the year 1840.

Q. How did you come to know it then? A. I was herding some sheep.

Q. Where were you herding sheep? A. At Ojo del Apache.

Q. How long did you herd sheep there? A. About one month.

Q. Was any one living there at that time? A. No, it was vacant. * * * * *

Q. State when you visited the spring subsequent to that time; if so, when? A. In the year 1852; about the year 1852.

Q. Was any one living at the spring then? A. No, I did not see any one.

Q. Would you have seen any one if they had been living there? A. Yes.

Q. Were there any houses at the spring at that time? A. I did not see any.

Q. Any corrals? A. I did not see any.

Q. Any acequias? A. I did not see any.

Q. Where did Ventura Trujillo live at that time? A. In San Miguel, a little below the place.

Q. Did he have his family living at Ojo del Apache at that time? A. No.

Q. Was he cultivating any land there at the spring? A. No.

Q. Did he have any cattle at that time? A. No.

Q. Did you ever know of Ventura Trujillo living at the Ojo del Apache? A. No.

Q. How was the spring used at that time, in 1853? A. I only saw animals coming down to that place.

Q. Whose animals were at the spring? A. Perhaps strayed animals.

Q. Were you ever at the spring between 1840 and 1852? A. No.

Q. What was the general reputation at that time as to who owned the property at this spring, if it was being owned by any one? A. In the year '62 the late Crecencio Baca was residing at that place. That was the first resident that I ever knew at that place.

Q. In 1852 was that regarded as belonging to any one, or as public property, or as what? A. No, at that time I did not see any habitation there."

On cross-examination he was asked: "Q. What was your occupation between the years 1840 and '1852? A. Farming.

Q. You were farming at Puertecito during that time, were you? A. Yes."

It has been shown that Puertecito was about fifteen miles from the property. The attention of the court is called to the testimony of this witness, where he replies to the questions, whether there was any house at the spring in 1852, or any corrals, or any acequias, to each of which he answers that he did not see any. While immediately following he answers positively that at that time Ventura Trujillo did not have his family at Ojo del Apache, nor was he cultivating any land there, nor had he any cattle there. The court will remember that Ventura Trujillo was living at the spring some time in 1840; probably after this witness and the last preceding one, Pablo Lucero, were there in that year, if they tell the truth. It is not shown what time of the year those two witnesses were there, nor what time in 1840 Ventura Trujillo was living there. All that they say as to that time may be true. They both testify that they did not see the place from 1840, the one until 1852 and the other until 1855. Ventura Trujillo only lived there for ten or eleven years after 1840. While the testimony of his son Francisco shows, he died ten years after possession was given him, it shows also that his heirs were occupying the property for three years, from 1852 to 1855, when his widow was living on the property with her new husband, one Juan Bautista Lucero, so that Trujillo must have died about the year 1852. He died in San Miguel, a distance of

about ten miles from this property, and this witness could well say in 1852 that Ventura Trujillo was not there with his family, and was not cultivating land there, and did not have cattle there, because, undoubtedly, he was not in existence, but as to his seeing houses, corrals and acequias, he does not say that they were not there, but only that he *did not see them.* This witness and the other one were both applicants for land on this property from the government within the last few years.

Another witness was produced by the defendant, Nicolas Apodasa. He testified, page 42, that he was sixty-two or three years of age.

"Q. Do you know the Ojo del Apache Spring? A. Yes.

Q. How long have you known it? A. I knew it in the year 1842.

Q. How did you come to know it in the year 1842? A. I was herder for my uncle.

Q. Do you know what part of 1842 you were there? A. Yes.

Q. What month? A. I remained May, June, July, August and September, herding there.

Q. You say you were herding your uncle's flock? A. Yes, some animals belonging to my uncle.

Q. Did you know Ventura Trujillo? A. Yes.

Q. When did you first know Ventura Trujillo? A. I had known him in San Miguel, and I also saw him at the Ojo del Apache in the year 1842.

Q. Just tell the court as to seeing him at the Ojo del Apache; how long he stayed, and anything connected with his coming there. A. He stayed there two or three days only.

Q. Do you remember when that was? A. About April or September. It was in that year.

Q. Do you remember the exact month? A. It was about April or May. In one of those two months.

Q. Did he come back to the spring while you were there? A. No, I never saw him again there.

Q. Who was there with him when he came at the time

you speak of? A. I understood that there was a son of his with him.

Q. What did they do at the spring? A. They made a kind of dam with some brush and rocks and then they came back.

Q. Did they cultivate any land there that you know of? A. No.

Q. While you were there, did Damasio Salazar come there with them or with any other one? A. No, I did not see them.

Q. Did Rafael Aragon come there? A. No, I did not see him."

The court's attention is called to these significant answers that he did not see Salazar or Aragon, just as was given by the preceding witness.

"Q. Did you know the Ojo del Apache after that time? A. Yes.

Q. Did Ventura Trujillo ever live there? A. No: never.

Q. Did any one live there? A. At that place, Ojo del Apache, there was no one living there that I saw; only Crecencio Baca, who had built a house.

Q. Who built the house? A. My uncle, Crecencio Baca.

Q. Was there any house there when you went there? A. No.

Q. Any cultivated land? A. No.

Q. Any corrals? A. No.

Q. When did Crecencio Baca go there? A. My uncle, Crecencio Baca, went there in September.

Q. Do you remember what year? A. In the year 1859.

Q. Between the year 1842 and the time Crecencio Baca built a house there, was the spring used for herding at all? A. The flocks used always to be watered there.

Q. Whose flocks? A. They belonged to the Casados people and to various others."

Here the court's attention is called to the testimony of Rafael Aragon, page 100 of the printed record, 135 of the manuscript record, in which he says, speaking of Ventura

Trujillo: "He was succeeded on the place by Juan Lucero, he by Jesus Casados, and he by John L. Taylor." This Casados is evidently the one referred to by the witness in his answer last above quoted.

"Q. Did Ventura Trujillo use this as a pasturing ground, to your knowledge? A. He never used it; he never had any animals."

This answer is contradicted by every witness for the claimant. The witness testifies on cross-examination, page 45, that he was herding goats, and to the question, "You moved about from place to place with them, just as they do now? A. Yes, grazing them.

Q. And wherever the night found you, you stopped? A. No, I went to Lagunita to sleep.

Q. Then you said you were at the Ojo del Apache Spring during the months of May, June, July and August and September, 1842. Were you not working any lands at Lagunita? A. I went with the goats because my uncle was at work on my land.

Q. Then you took the goats out in any direction you pleased from Lagunita, did you? A. Yes, where they would ask me.

Q. And come back at night and stay there all night? A. Yes, I would return home.

Q. And stay until the next morning? A. Yes.

Q. And after the year 1842, where did you live up to 1852? A. Between the year 1842 and 1852 I lived at Puertecito and Lagunita.

Q. You say you saw Ventura Trujillo at Ojo del Apache in 1842? A. Yes.

Q. He was there with his son, you say? A. Yes, I think it was a son of his. * * * *

Q. Where were you in the year 1843? A. At Ojo del Apache.

Q. Living at Ojo del Apache? A. No.

Q. How long were you at Ojo del Apache in 1843? A. I would go there to herd some days and would return to the house.

Q. How many days were you there in the year 1843? A. I do not remember, but went there many days.

Q. And from the year 1842 where were you? A. In 1842 I was in Lagunita.

Q. In 1844 where were you? A. I was at my house in Los Rincon.

Q. Where is Rincon? A. It is opposite Puertecito, on the opposite side of the river.

Q. And you stayed there until 1852, did you? A. I remained there. Yes, until the year 1852.

Q. From 1842 until 1852 you were at Rincon? A. Yes."

The attention of the court is called to the fact that there is no question but that Damasio Salazar delivered the possession of the property in question to Ventura Trujillo on July 2, 1842. Yet this witness says he did not see Salazar nor Aragon nor Ventura Trujillo in that month, nor the witness Encarnacion Lopez. But he shows plainly that some time in that year, either in May or in September, Ventura and his son did come there and make a dam, showing that they were laying claim to the property. This is a fact which cannot be disputed. This witness also shows that from 1842 to 1852 he was living at Rincon, a place somewhat distant from there, although he says that he was at the spring some days in 1843. He was then only about ten years of age, and his recollection could not be very vivid—certainly cannot be as clear and positive as persons who were there and saw Ventura Trujillo living there, constantly, such as his son Francisco and Encarnacion Lopez, who lived there with Ventura Trujillo for five years, working with him.

The next witness for the defense was Miguel Apodaca. He says he lived at Rincon de las Bacas, which is fifteen or twenty miles from the Ojo del Apache. That he first knew the Apache Spring in 1842. That he was there several times; went there hunting up animals, in the year 1842, and afterwards. That at the time he knew the spring nobody was there. But in 1842 he saw Ventura Trujillo at the house of Lorenzo Lucero. He had come from the Ojito del Apache. That Lorenzo Lucero asked him how he was getting along with his land at the Ojo del Apache, and Trujillo said he went to work at that land, at Ojo del

Apache, that was given him by Damasio Salazar, but was not successful in it because the water was not enough, and that the three dollars he had paid Damasio Salazar for that hijuela was worth more than the whole Ojo del Apache. (This three dollars was evidently the fees of the alcalde.) That when he was at the Ojo del Apache there were no houses there, no cultivated land, and no corrals. That anybody pastured their stock there; they were common pasture grounds; that he did not know who they were. On cross-examination he states that his residence was possibly fifteen or twenty miles from the Ojo del Apache in 1843, and shows that the people at that time did not travel about much, and were not acquainted with what people in other towns owned. That it was in the months of March and April that he was at Apache Spring, in 1842.

The court will notice that this was at least two months before Damasio Salazar gave the possession to Trujillo. The witness said when he was there, in 1842, he was looking for lost animals, and went by the place, but did not stop, and that the next time he was there was not until 1855. (See bottom of page 62.)

On page 53 he shows that the conversation he had or heard with Ventura Trujillo was at the house of Lorenzo Lucero, and that was in March or April, 1842, more than two months before the possession was given. The conversation as represented on that page as having been had in March or April, 1842, purports to have been one with Salazar; evidently this is a mistake in transcribing the notes of the stenographer as that refers to the conversation with Trujillo.

The witness on page 55 admits that he did know that Ventura Trujillo had land at the Ojo del Apache, and on page 56 he says between the time Ventura Trujillo went from the Ojo del Apache to the house of Lorenzo Trujillo, which was in March or April, 1842, until the time Crecencio Baca made improvements, he was not at the spring.

This witness, if he is to be believed, simply proves that before the possession was given by Salazar there were no houses at the spring, and that the first houses that he saw there were made by Crecencio Baca, who was really there

in 1855, although some of the witnesses say it was in 1859. It cannot be pretended that any of these witnesses for the defense had equal means of knowledge with the witnesses for the claimants. Two of them first saw the land or spring in 1840, and one of the two next saw it in 1852 and the other in 1855. The other two first saw it in the early part of 1842. One of them says that he herded sheep around about there in May, June, July, August and September, but he camped every night at Lagunita, and herded his sheep in every direction. He does not really say that he ever went directly to the spring. There can be no doubt but that possession was given to Trujillo in 1842, and that he then took possession of the land, made improvements and built a house and lived there with his wife and sons. Very likely he had a house in San Miguel, a distance of about ten miles from there, where he may have passed some part of his time, and where these witnesses have frequently seen him, especially in the winter season, but none of these witnesses, except one, was at the spring between 1842 and 1852, and that one was there only in the year 1843, and his answers are that he did not see any houses, corrals or acequias there. That proves nothing, as the witness does not show conclusively that he was so situated that he must necessarily have seen them if they were there. He was a boy, and while the custom of the country was to graze sheep indiscriminatley over the lands of every one, as well as over the public lands, they always respected the inclosures, improvements and waters at or near residences, and never went near them, so that there is no probability that these parties occupied the waters at the spring, or had a certain knowledge as to whether there were residences there or not. But assuming that they did, and that their evidence is positive on that subject, the weight of evidence is still in favor of the claimant.

Claimant has gone extensively into this evidence, so as to brief it for the benefit of the court and make it easier to be digested upon the consideration of the case, and submits that the evidence shows a strong case in favor of the claimant. First, that the grant was made by the Governor. Second, that it was placed in the archives and has been

lost therefrom, and that there is sufficient accounting for its loss, so as to give secondary evidence, as this court determined in the Chaves case. Third, that the claimant and his predecessor in title had the possession of this property without any interruption for more than twenty years, from July, 1842, and that he and those under whom he claimed have ever since 1842 had the uninterrupted continuous possession of the spring itself and the lands for over a mile around it, all of the time up to the present, except one time when the Indians drove them off about 1854 or 1855, and that they then kept watch of the same and went back to it as soon as possible. An interruption by hostile Indians, twelve or thirteen years after the possession commenced, cannot be held to break the running of the statutes, or to disturb the actual continuous possession. The Surveyor General in 1873, on a small amount of evidence only, and no proof of existence of the grant by the Governor, disapproved the claim. Afterwards he took new evidence, but would not open the case to change his decision, but reported the evidence to Congress for its action. In this state of the case the land department extended the public surveys over the property, or a portion of it, and settlers have come in on it. None are shown to have been there longer than twelve years prior to 1896; that is, earlier than 1884, which was forty-two years after juridical possession was given, except the Montoyas, who were about three miles from the spring, and who Hays, the claimant, says he supposes have been living there thirty or forty years, but does not know how they claimed. This certainly is not accurate enough to break the continuous occupation, especially when it is not shown that that occupation was of a hostile character, or anything more than a mere trespass. A trespass never breaks the running of the statute of limitation or interferes with the prescriptive right, unless the party sets up a claim of right himself, and there is nothing showing that these Montoyas set up any claim of right.

AUTHORITIES AND ARGUMENT.

The attorney for the government claims that there was no power in the Governor of New Mexico to make this grant. That the colonization law of 1824 and the regulations of November 21, 1828, were not then in force, that is, in 1842. This court has frequently decided and held that that law and those regulations were the only laws and regulations in force up to the time of the occupation of New Mexico and California by the United States authorities. That point needs no argument.

United States vs. Vigil, 13 Wall, 450: In this case the courts say:

> "It has been repeatedly decided by this court, the only laws enforced in the Territory of New Mexico for the disposition of public lands, with the exception of those relating to missions and towns, are the act of the Mexican Congress of 1824 and the regulations of 1838."

United States vs. Osio, 23 How., 275, et seq.
United States vs. Cambuston, 20 How., 60, et seq.
This last case was founded on a grant made in 1846.
See also United States vs. Reading, 18 How., 3, 7.
Hornsby vs. United States, 10 Wall., 236.

The last two cases also hold that notwithstanding the act of 1824, stated that no grant should be definitely valid until confirmed by the Departmental Assembly, yet that the Governors of the territory could make grants which would pass the title sufficient to call upon this government to confirm the same, as the grantee was in the condition to require a confirmation or recognition from the Mexican government when that government controlled the territory.

"The public acts of public officers purporting to be exercised in an official capacity and by public authority shall not be presumed to be usurped, but that a legitimate authority had been previously given or subsequently ratified."

This court in United States vs. Peralta, 19 How., 347, said:

> "This court had frequently so decided."

See United States vs. Arrendondo, 6 Peters, 728, 9 & 30.

United States vs. Castillero, 2 Black, 340.

Claimant insists that Damasio Salazar, as an alcalde of the demarcation where the land in question was situate, was the proper authority to give possession under a grant made by the Governor, in that demarcation; that he having so acted by so giving the grant, he being a public officer, and his act being a public act, the presumption is that he acted under proper authority conferred or subsequently ratified. This presumption fortifies the contention that a grant was made by the Governor. It even establishes that the grant was actually made. The authorities referred to say:

> "This court had frequently decided that the public acts of public officers purporting to be exercised in an official capacity and by public authority, shall not be presumed to be usurped."

This court cannot presume that Salazar usurped his authority. On the contrary, it must be presumed that a legitimate authority had been previously given or subsequently ratified. Taking this presumption in connection with the facts in evidence, the court cannot but believe that the grant was made and Salazar directed to give the possession. That is the only authority he could have; besides, the claimant has proved by Miranda, the Secretary of the Territory, that the grant was actually made, and that Salazar was directed to give the possession under it, and that he did so, and so reported back to the Governor, and this is also corroborated by Rafael Aragon, Encarnacion Lopez and Pascual Baca. The absence of the grant from the archives, where Miranda testifies it was deposited, is sufficiently accounted for (United States vs. Chaves, 452) to

authorize secondary evidence, and that evidence is given.

The claimant in this case has brought himself and his predecessors in title easily within the rule that where there is no archive title, still the claimant may prove the execution of the grant, and if he proves possession under it, so as to show good faith, and the compliance bona fide with the intent of the grant and with the law, his grant will be good, although it had never been placed in the archives.

United States vs. De Haro, 22 How., 243. This case was founded on a grant, an original copy of which was produced, but was not found in the archives; the genuineness of the Governor's signature, however, was proven. The courts say on page 298: "It appears that an undisturbed possession of the property claimed has been in the possession of Francisco De Haro and his heirs sixteen years, and it does not appear that any one has claimed or exercised possession or right of possession over the premises. * * Upon the whole we cannot doubt, from the title papers, and especially from the sixteen years' possession which has been enjoyed by De Haro and his heirs—using the property as their own, claiming it under the grant—that the title should be confirmed."

In Peralta vs. United States, 3 Wall., 440, this court says, speaking of a grant which could not be found in the archives:

"But it may be said that the archives of the country may be lost or destroyed, and if so, that the party in interest should not suffer. This is true; and if the claimant can show to the satisfaction of the court that the grant was made in conformity to law and recorded, and that the record of it has been lost or destroyed, he will be permitted to introduce secondary evidence of it."

Also White vs. United States, 1 Wall., 680.
United States vs. Castro, 24 How., 349 and 350.
Pico vs. the United States, 2 Wall., 279.

The objection that the grant is not found mentioned in the Vigil index is not entitled to much weight.

United States vs. Auguisola, 1 Wall., 352.

This case refers to the Jinmeno Index in California, but there is no proof in this case that the Vigil index was made by any authority or that Vigil was an officer or an employe and authorized to make it, or that it was accurate. It purported to be made about 1851, before the establishment of the office of the Surveyor General in New Mexico, and about the time the present territorial organization took effect. It is not shown in any manner to be approximately correct. It only purports on its face to be an index of grants, but other grants have been shown not to be mentioned in it, particularly the grant of Juan Chaves, on which the case of United States vs. Chaves, 159 United States, 455, is based. This index has not been considered of sufficient importance to be alluded to more than once or twice in all the cases tried before the Land Court, although many of them were not mentioned in it.

III.

Adverse, exclusive and uninterrupted possession for twenty years, under the general rule of American law, will require a grant to be presumed. (United States vs. Chaves, 159 U. S., 464.) The courts say in this case: "It is scarcely necessary for us to consider such a question, because, as we have seen, there is ample evidence from which to find that these settlers were put in juridical possession under a grant from the Governor of New Mexico, who, under the law then in force, had authority to make the grant. However, we do not wish to be understood as undervaluing the fact of a possession so long and uninterrupted as is displayed in this case. Without going at length into the subject, it may be safely said that by the weight of authority, as well as the preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years, and that such rule will be applied, as a *presumtio juris et de jure*, wherever by *possibility* a *right* may be *acquired in any manner* known to law."

It would seem to be unnecessary to cite authorities beyond this. In that case the grant was not produced from

the archives, nor was any copy of it from private hands. It was proven that the archives had been sold, and some of them containing grant papers lost, or not recovered, but the existence of the grant was proven, as in this case, but not by as strong evidence as in this.

Possession in this case has been proven to have been given on July 2, 1842. It is shown that the grantee had possession at the spring prior to that, but under the possession given by the alcalde, his boundaries were fixed and limits defined, and he was juridically given the possession. The proofs show beyond question that during that year he moved his family there with his children, or, at least, had them there. Of course, in July it was too late to make any crop for the year 1842, and not until the spring of 1843. All the witnesses for the claimant, except one who was only fifty-three years old, and the claimant himself, show that the grantee entered into possession and so continued until his death, although he died at San Miguel, a distance of ten miles from there. It is shown that he remained for ten or eleven years, and his sons remained there for three years more, which would take them up to 1854 or 1855, when they were driven off by the Indians. They say that they immediately returned. One of the identical sons so testifies; that is, that he kept watching the place and returning to it from time to time for about one year, and then returned to it. It is shown without doubt that one Bautista Lucero and Crecencio Baca occupied the property from 1855 for nine or ten years. Lucero married the widow of the grantee, and she lived there with him. Lucero, in his own testimony, says he stayed there four or five years. The testimony further shows that Crecencio Baca and Lucero were there by permission of the widow, and some of the witnesses say that Baca was there in 1859, and others in 1862. All of the witnesses for the claimant show that the property was occupied by Lucero and Baca in 1855, and that Baca continued to occupy it at least as late as 1862, and Lucero says that he occupied it until he sold it to Taylor. It is shown that Taylor occupied it until he sold to claimant Hays, and that Hays occupied it until the day of trial. All these parties, from the original grantee in 1842 down to Hays, the

claimant in 1896, actually lived on the property, claiming it as a grant to Ventura Trujillo, and by conveyances to them down to the present time. All the neighbors in that vicinity, and everybody in that neighborhood, as the testimony shows, regarded and respected the property as the property of Ventura Trujillo, granted to him by the Governor and alcalde, and as the property of his successors down to and including the claimant. There is nothing shown to overcome the positive evidence of the claimant as to possession, except some negative testimony, such as the parties did not *see* certain things, and by witnesses who were seldom there, and who were not there at any time after juridical possession was given earlier than 1852, and then only once or twice. Such testimony should not be allowed to overcome positive and direct testimony of persons who lived upon the property, who were there and saw the parties in possession, and who testified to continuous, uninterrupted possession, except during one year by hostile Indians, about twelve or thirteen years after the grant was made, and who show that they returned as soon as possible and retook possession. There can be no pretense that the Indians set up a hostile possession, or that their driving away the owners or occupants would legally interfere with the possession when it is shown that the parties returned within a reasonable time and retook possession and forever thereafter held it under the claim of the grant.

The case is respectfully submitted and confirmation of the grant asked of this court.

T. B. Catron,
Attorney for Claimant Hays.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

MAY HAYS, APPELLANT,
v.
THE UNITED STATES. } No. 19.

OJO DEL APACHE GRANT IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

This suit was instituted by the claimant filing his petition in the Court of Private Land Claims on February 17, 1893, for the confirmation of the Ojo del Apache grant, situate in San Miguel County, N. Mex., alleged to contain 11 square leagues, or 47,743 acres (R., 1–4).

Subsequently an amended petition was filed, on which the cause was tried, which alleged substantially (R., 11–15) that prior to July 2, 1842, Manuel Armijo, then governor of New Mexico, granted the tract in question to Ventura Trujillo, in accordance with his petition for the same, and by decree directed the constitutional alcalde of the demarcation of San Miguel del Bado to place the petitioner in possession of the land; that said alcalde afterwards made his return that he had placed the petitioner in juridical possession of the land as directed, which return, together with the original papers, was duly deposited in the archives of New Mexico.

That the petitioner has in his possession neither the original of said petition nor a copy thereof, nor the order and decree of said governor, nor the return of said alcalde, and that the same are not in the possession of the surveyor-general of New Mexico; but he alleges that the archives of New Mexico, previous to the occupation of the Territory by the United States and for some time thereafter, were kept carelessly, and many of the papers and documents therein were lost and destroyed, the above being above the number.

Plaintiff then mentions several witnesses by which the grant, petition, order, and juridical possession can be proven.

It is further alleged that on July 2, 1842, Damasio Salazar, a justice of the peace, placed the petitioner in juridical possession of the tract mentioned, describing the boundaries, acting in conformity with the laws and customs of New Mexico, and that said Ventura Trujillo entered into the possession of said tract so granted and

occupied the same for about four years from July, 1842, and that ever since and up to the present time his legal representatives and those claiming under him have held, claimed, used and occupied, owned and grazed upon peaceably and notoriously the whole of said land.

That at a time not specified the then owner of said grant made application to the surveyor-general of New Mexico for the approval of said grant, under the provisions of the law of July 22, 1854, which application was rejected and approval denied, the surveyor-general finding that said grant was made by a justice of the peace, who, under the laws of New Mexico, had no power to make a grant of land. That subsequently an application was made to said surveyor-general to reopen said application for confirmation, to receive new testimony, which testimony was taken, but it appears no further action was had on the matter, and said application is now on file in said office.

The petition contained other formal allegations bringing it within the provisions of the act of March 3, 1891, establishing the Court of Private Land Claims.

On August 25, 1896, upon motion of the United States, an order was made requiring the plaintiff to serve adverse possessors and claimants with citations and copies of his petition, and on October 24, 1896, the answer of these adverse possessors was filed (R., 19–21), specifically denying the allegations of claimant's petition, save as to the nonpossession of the original title papers and the proceedings before the surveyor-general, as set forth in the petition. It contained further allegations as to their derivation of title to certain portions of said land under

the public-land laws of the United States and the issu of patents thereon by it.

On November 12, 1896, the answer of the United States was filed (R., 23, 24), which put in issue generally the allegations of claimant's petition, and alleged further that if any such grant had been made as claimed, the same was abandoned by the grantee within a short time after he took possession.

The trial of the cause was had on November 13 and 16, 1896. The claimant presented as his original muniment of title a document purporting to be the act of juridical possession, reading as follows (R., 57, 58):

> Seal fourth. [SEAL.] One-fourth real.
>
> For the year eighteen hundred and forty and eighteen hundred and forty-one.
>
> In this second demarcation San Miguel del Bado, on the second day of the month of July of the present year, eighteen hundred and forty-two, before me, citizen Damasio Salazar, justice of the peace of said precinct, personally present appeared citizen Bentura Trujillo, citizen and resident of the first demarcation, soliciting the place and land commonly called the Ojito del Apache, to establish, in company with his children, a farm on which he believes he will have the means necessary for the support of a large family, and to give tithes (illegible) and the holy church their corresponding portions, and I, said alcalde, finding the petition to be a just one and acting in conformity with the supreme decrees, have made him said donation in the name of God and the supreme Mexican nation, so that as a good compatriot he may make use of it, observing the require-

ments which our laws provide, under the condition and restrictions that if he does not provide a protection to prevent the damages which may result to him he is under obligation to bear them, it being commons and pasture grounds of the inhabitants of this precinct; and the boundaries corresponding to said grant are on the north the mesa; on the south the old road to Los Chupaines; on the east the mesa de los Chupaines, and on the west the hills bordering on the Canoncito de las Lagunitas; and in order that this foregoing instrument may have the force and validity by law required the aforesaid Trujillo requested me to interpose my authority and judicial decree, and I, the said justice, declared that I would interpose, and did interpose as far as I am authorized by law, those of my attendants signing with me with whom I act by appointment for the notorious lack of a notary public, there being none of any kind in this department. In form of law, to all of which I certify.

DAMASIO SALAZAR.

Attending:
RAFAEL ARAGON.

Attending:
SALVADOR GONZALES.

And it is given on this antestamped paper, there being none of the proper stamp.

SALAZAR.

Claimant presented (R., 28, 29) numerous mesne conveyances, tending to connect himself with the original grantee, which are omitted from the record by stipulation (R., 118, 119).

The testimony of the custodian of the archives in the office of the surveyor-general was presented to show that

the original grant papers did not now exist among said archives (R., 25–28).

The deposition of Juan Bautista Lucero, the only witness testifying before the surveyor-general on the first application for approval of the grant, was introduced by claimant (R., 98, 99) to the effect that he was the purchaser of the grant from the original grantee, and first knew of its occupation by him in 1855.

The depositions of Rafael Aragon (R., 100, 101), secretary of the alcalde who gave the juridicial possession alleged, and Guadalupe Miranda (R., 102, 103), secretary of New Mexico at the time the grant was made, taken at the hearing of the second application to the surveyor-general for approval of the grant, was introduced by claimant, which was that the governor had made a valid grant and that the constitutional alcalde had acted under it when he put said Ventura Trujillo in possession of the tract.

The depositions of several witnesses, taken by one of the justices of the court previous to the trial, were introduced in evidence by the claimant (R., 63–98). These tended to show that the tract in question had been occupied by the original grantee and those claiming under him ever since the date of the alleged grant, and, indeed, for some years previous thereto, and also described the boundaries of the land.

Oral evidence was introduced by the Government (R., 29–56) showing that the land in question had never been occupied by the alleged original grantee, but that he and his family, on the contrary, lived at the date of his

death, and for many years previous thereto, at a point miles distant from the land in question (R., 30, 39, 42). That while the alleged grantee had been upon the land in 1842, he never made any improvements thereon, and after remaining a few days left the premises with the declaration that the paper for which he paid the justice of the peace was worth more than the whole grant (R., 50). That the property at that time and for years subsequent to the American possession had been used and regarded as common pasture ground for the people of the vicinity, the alleged grantee or his representative making no claim to be the owner thereof.

It was also shown that the index of the Spanish and Mexican archives, purporting to be a complete and full one, completed in the year 1851, contained no mention of any grant by the governor of New Mexico, as contended for by the claimant (R., 57).

Upon the proof thus submitted the case turned largely upon the construction of the original muniment of title presented by the plaintiff, which has already been set forth in full. Claimant's contention was that the paper in question was not a grant, but a record of a mere act of possession by the alcalde, made pursuant to a grant by the governor, subsequently lost or destroyed, it being urged that the expression "in conformity with the supreme decrees" referred to an order from the governor, under whose direction, it was alleged, the alcalde was acting.

On behalf of the Government it was contended that the paper presented showed conclusively that the concession in question was a grant by an alcalde, acting

upon his own authority and arrogating to himself the right to alienate the public domain. It was pointed out to the court that this document showed that the alcalde acted upon a petition presented directly to him, asking for the land; that he in so many words made a grant or donation of the tract; that so far from the paper being an act of possession there was nothing in it to indicate that the alcalde did give possession, and it was not in the form theretofore and subsequently used by alcaldes in conferring juridical possession in such cases, which always recited the entry upon the land by the grantee in company with the alcalde and the immediate commission of acts denoting proprietorship, etc. The Government contended that the "supreme decrees" referred to were not orders from the departmental government, which was always referred to in such documents as the "superior government," but were the general laws of the Mexican nation under which the alcalde assumed that he had the right to donate the public domain. It was argued that the recitals of the very paper upon which plaintiff founded his claim negatived at every point the oral testimony and depositions presented to show that the governor of the department of New Mexico had anything whatever to do with the grant in question. Finally, it was contended that the grant, being on its face a concession by a mere alcalde, should be rejected, that official having no authority, under the laws of Mexico, to make a grant of the public domain.

On November 23, 1896, the Court of Private Land Claims rendered its opinion, per Fuller, A. J. (R., 115–

117), sustaining the contentions of the Government, and a decree was entered rejecting the claim and dismissing the petition.

On May 21, 1897, plaintiff was allowed an appeal to this court.

ARGUMENT.

The decision of the Court of Private Land Claims in this case is correct and should be affirmed for the following reasons:

1. Assuming, as contended for by claimants, that a grant of the tract here claimed was made by Governor Armijo in 1841 or 1842, that official had at that date no power or authority to make a grant of the vacant public lands of the Mexican nation, or to initiate proceedings for that purpose; and the alleged grant is void for lack of power in the granting officer.

2. Even if, as contended for by claimants, that official made such a grant, and had power so to do by virtue of the provisions of the regulations of November 21, 1828, such an order made by the governor does not constitute a claim such as the Court of Private Land Claims has jurisdiction to confirm, it not being a claim "complete and perfect at the date of the treaty, nor one which claimants would have had a lawful right to make perfect had the territory not been acquired by the United States."

3. There is no sufficient proof of the making of a grant by Governor Armijo, as alleged in claimant's petition.

4. Assuming that a grant was made by Governor Armijo, as alleged, there is no proof of the character of

the grant sufficient to enable the court to say that it is a claim within its jurisdiction.

5. The possession shown by plaintiff does not justify the presumption of a grant from competent authority.

I.

Assuming, as contended for by claimants, that a grant of the tract here claimed was made by Governor Armijo in 1841 or 1842, that official had at that date no power or authority to make a grant of the vacant public lands of the Mexican nation, or to initiate proceedings for that purpose, and the alleged grant is void for lack of power in the granting officer.

Upon this proposition it is not desired to submit anything in addition to what is contained in the brief in the case of *Ortiz* v. *United States*, No. 20, this term, under point *one*. It is believed that the authorities there urged clearly establish that the governor of New Mexico had subsequent to 1837 no right to make a grant; certainly no right to gratuitously alienate the public domain.

II.

Even if, as contended for by claimants, Governor Armijo made a grant, and had power so to do by virtue of the provisions of the regulations of November 21, 1828, such an order made by the governor does not constitute a claim such as the Court of Private Land Claims has jurisdiction to confirm, it not being a claim "complete and perfect at the date of the treaty, nor one which claimant would have had a lawful right to make perfect had the territory not been acquired by the United States."

It is not pretended by claimants that the alleged grant by Armijo to Venturo Trujillo was ever approved by the departmental assembly or council. Under the regulations of 1828, until it was so approved, the concession was not definitively valid; it was an imperfect title. In the case of *Ortiz* v. *United States*, *supra*, it has been fully argued for the Government that the approval of the title and its final consummation was a matter absolutely of discretion on the part of the assembly, and that the claimant had thus under the former government no lawful right to demand that his title be perfected. It is there further argued that such a claim is not within the jurisdiction of the Court of Private Land Claims, that tribunal being limited to the confirmation of perfect claims and those which, if not complete and perfect at the date of the acquisition of the territory by the United States, claimants would have "had a lawful right to make perfect."

It is not desired to add anything to the views urged on this subject in the Ortiz Case, which are entirely applicable to the record now under consideration.

III.

There is no sufficient proof of the making of a grant by Governor Armijo, as alleged in claimant's petition.

The pretense that the premises here in dispute were granted to Venturo Trujillo or any one else by Governor Armijo is a matter of comparatively recent development, a manifest afterthought. Certainly one of the first propositions which impresses the purchaser or holder of

property is the source of his title and the name of his grantor; and the further we go back toward the primary source of title the more likely are we to arrive at a correct statement of what that source of title is. The earliest indication given by the record as to the source of the title here asserted is contained in the petition to the surveyor-general of New Mexico, filed before him by John L. Taylor, claimant of this tract, about the year 1870, in which the following allegation as to the derivation of the title is found (R., 105):

> Your petitioner would further state that said grant of land was duly made according to law and the usage and customs of the laws of Mexico on the second day of July, eighteen hundred and forty-two (1842), by *one Demasio Salazar*, a justice of the peace in the said county of San Miquel del Bado, to one J. C. Ventura Trujillo, a resident of said county of San Miquel del Bado.

It is to be presumed that Taylor made inquiry when he bought this grant as to who made it. Certainly any careful purchaser would have done so, even though, as here, the purchase price was only $12 for a tract of 50,000 acres (R., 99). This statement by Taylor that his grant was made, not by Governor Armijo but by Damasio Salazar, a justice of the peace, is thus most significant, and must have been based upon information secured by the petitioner in his earliest and most reliable investigations into what he was purchasing. Upon this statement of his claim Surveyor-General Proudfit (R., 108) found the grant to be not entitled to confirmation by Congress, and so reported. A reading of his very thorough report will show

that the controversy before him turned not on whether Armijo had made the grant; it was not at that time pretended that he had done so. The claim was based entirely on the contentions that the justice of the peace, Damasio Salazar, had made the grant and that he was empowered by law to make it. This view Mr. Proudfit did not accept, and his unfavorable report is on the ground that there was no power in Salazar to make a grant. This last question is not in the case on the present record, counsel for claimant very properly disclaiming (Brief, p. 9) any contention "that Damasio Salazar as justice of the peace, or alcalde, could have made this grant."

After this decision of Mr. Proudfit had been transmitted to Congress Mr. Taylor filed a petition in the nature of a motion for a new trial on ground of newly discovered evidence (R., 113). Mr. Proudfit entertained this petition to the extent of permitting the parties to secure their additional testimony, which he transmitted to the Commissioner of the General Land Office (R., 114), but at the same time stated that there was nothing therein leading him to desire to modify his original opinion. He also expressed his doubts as to having any jurisdiction to receive this further testimony, "the matter being now before Congress."

It is upon this further testimony, so secured, that of Guadalupe Miranda and of Rafael Aragon (R., 100–103), that appellants rely for a disapproval by this court of the decision of the officer provided by the act of July 22, 1854, for the investigation of this character of claims and the reversal of the court below, a tribunal provided

by the act of March 3, 1891, for the same purpose. In making the statement that the testimony of Miranda and Aragon constitute all of claimant's foundation for seeking a confirmation, sight is not lost of the fact that one or two of the witnesses examined by claimants at the trial stated that they had heard that this land was granted by Armijo. None of these made the slightest pretense, however, that they had ever seen such a grant, and their testimony throughout is so clearly hearsay that it will not be further discussed; and the portion of the record to which attention will be given is that containing the testimony of Miranda and Aragon. As a preliminary consideration, the Government begs to repeat now the objection urged on the hearing (R., 25, 28) as to the admissibility of this testimony. This objection is threefold: *First*, that no sufficient foundation is laid in the record for secondary evidence of the grant; *second*, that the surveyor-general of New Mexico was without authority, after making his report to Congress, to take this testimony; and *third*, that even if he had that power he had no right to delegate it to the deputy clerk of a district court.

The only law under which Armijo could possibly have made a grant in 1841–42 is found in the Regulations of November 21, 1828. As above argued under point One, even these regulations were not in force at that date, so that he was wholly without authority to make grants in colonization. But assuming, *arguendo*, that they were in force and that Armijo was acting under them in this matter, it was his duty, after an examination, to "grant or not

the application," as he might see fit. (Sec. 4 of Regulations of 1828.) Under the Mexican procedure, as revealed by the California cases (*Bolton's Case*, 23 How., 347; *Peralta Case*, 3 Wall., 434) and the New Mexico cases appealed to this court, the governor was accustomed to make a granting decree, retaining the original in the public archives, with a record thereof in a book provided for that purpose (*Peralta Case*, 3 Wall., 434), and giving a *testimonio* or second original thereof to the grantee. This was done, on the one hand, in order that the Government might have duly recorded in its archives so important a matter as the donation of its public lands, and the grantee, on the other hand, might likewise have in his possession a paper evidencing the governor's act. Assuming that the governor complied with the law in each of these respects, before secondary evidence can be received of his acts both of these originals must be accounted for—the one retained in the archives, the other given to the grantee. It is respectfully submitted that this has not been done in the present case. So far as the archive copy is concerned, the proof here submitted falls very far short of the standard fixed by *Peralta* v. *United States* (3 Wall., 440) and quoted by claimants' counsel at page 50 of his brief. There it is said:

> If the claimant can show to the satisfaction of the court that the grant was made in conformity to law and recorded, and that the record of it has been lost or destroyed, he will be permitted to introduce secondary evidence of it. But the absence of record evidence is necessarily fatal, unless that absence can be accounted for.

Here the proof does not establish that there was ever such a grant made nor that such a grant was ever recorded in the archives of Mexico; nor does it establish that such a grant has been lost or destroyed from said archives. The Vigil Index, to which reference is made on page 57 of the record, is a part of the archives of the surveyor-general's office, having been turned over to that official upon the institution of his office under the act of 1854.

This index purports to have been made by Antonio B. Vigil and to have been completed in the year 1851, and it was admitted by counsel for claimants (R., 57) that "the index was so made." It is entitled "A General index of all documents of the Government of Spain and Mexico up to the year 1846," and an examination of it by this court (it being now in the custody of the clerk, having been certified up in the case of *Ortiz* v. *United States*, No. 20, this term) will show that it is a rather pretentious volume. In view of its custody and its age it is entitled to very great respect as bearing on matters which it purports to affect, and it is certainly entitled to as great weight as the Hartnell Index, which is referred to so frequently in the California cases. In this index there is stipulated to be no mention of the Ojo del Apache grant, and if we are to impute to this ancient volume, found in the proper custody, the verity which such documents are always presumed to possess, that of being what they purport to be, the Vigil Index establishes that at the date of its completion in 1851 there was no Ojo del Apache grant in the archives. If this be true,

then the rule established by the Peralta Case (*supra*) has not been complied with by claimants, for the proof thus shows that there was "no grant made in conformity to law and recorded." The fact, as stipulated by the Government on request of counsel for claimants (R., 57), that "a portion of the Spanish and Mexican archives in this Territory was lost, sold, or destroyed in the year 1870, containing grants and other papers," is of no relevance.

If, as the Vigil index shows, the Ojo del Apache grant was not in the archives in 1851, it could not have been destroyed in the alleged spoliation of the archives under Governor Pile in 1870, and that much exaggerated incident is entirely immaterial and irrelevant. Claimant's counsel seeks in his brief to destroy the force of the Vigil index as evidence bearing on this case in the suggestion that its incompleteness is shown by the fact that no mention is found therein of the Cubero grant, confirmed by this court in *United States* v. *Chaves* (159 U. S., 464). This fact, however, has no bearing. The grant claimed in that case is alleged to have been made in 1833. This record (p. 57) has a stipulation to the effect that certain archives of the Mexican Government were lost or destroyed in the year 1837. The absence of the Cubero grant from the Vigil index is thus readily accounted for in the supposition that it was among these archives destroyed in 1837. Between the alleged date of the Ojo del Apache grant in 1841 or 1842, and the Vigil index dated in 1851, however, there was no spoliation of the archives, and the only theory upon which the absence of the Ojo del Apache grant can thus be explained is the

fact that it was not there when Vigil made his index—and for the very best of reasons, that it was never made.

The archives develop another fact which shows strongly that this grant was never made and consequently never recorded.

The deposition of Guadalupe Miranda (R., 102) is to the effect that the petition for this grant was presented to Armijo about 1841 or 1842. Miranda does not pretend to recollect the exact date. Aragon, the other witness (R., 100), testifies that the grant was made in the year 1841 by the alcalde, Damasio Salazar, pursuant to an order of Armijo, which must thus have been signed by the latter as early as 1841. These two depositions construed together establish, if they establish the making of this grant at all, that it was made in 1841. As it happens, there is found in the archives the borradores or rough drafts of the decrees of Armijo for the year 1841. The exact period covered by this archive, which is No. 1317, is from August 22, 1840, to January 19, 1842. The original of this archive is now in the possession of the clerk of this court, it being a matter of whose contents this court is authorized to take judicial notice. An examination of this shows that during the very period within which the grant in question is alleged to have been made by Armijo a record of his official acts was kept by him, and in that list there is no mention whatever of the Ojo del Apache order. (See certificate of Special Agent Flipper filed herewith.)

Unless we are to impugn the verity of the records of the former government—the very source and the only

source to which, under the California cases, we are justified in going—and are to believe loose oral testimony in preference to these records, we must conclude that no Ojo del Apache grant was ever made by Armijo; that it was never in the archives, and was never recorded therein, and thus the case is not one in which secondary oral evidence is admissible under the Peralta decision. This record illustrates anew the wisdom of the rule discussed in that case, where the effort to fritter away the record evidence received from the former government and to substitute for it the recollection of Mexican ex-officials is discussed. Here we have the positive record evidence, and here again the Mexican ex-officials, Aragon and Miranda, and here, as there, the rule should be applied. As was said in that case:

> Very many claims were tested by the rules and found to be valid and were confirmed; others were imperfect and could not be recognized. There commenced a struggle, which has never been abandoned, to induce the courts to fritter away the act of Congress and *substitute parol proof for record evidence.* The history of the cases in this court from California shows the extent of the struggle and the result. We have refused to allow oral testimony to prevail where archive evidence was necessary. * * * The Mexican nation attached a great deal of force to the disposition of its lands and required many things to be done before the proceedings could ripen into a grant. But the important fact to be noticed is that a record was required to be kept of whatever was done. This record was a guard against fraud and imposition and enabled the Government to ascertain with accuracy what portion of the public

lands had been alienated. *The record was the grant and without it the title was not divested.* The governor was required to give a document to the party interested, which was evidence of title and enabled him to get possession; but this "*título*" *did not divest the title unless record was made in conformity with law.* Written documentary evidence, *no matter how formal and complete or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands, and there is nothing in the public records of the country to show that such evidence ever existed.*

This discussion, just concluded, while applicable to the position first above announced, that the proper foundation has not been laid in this case for secondary proof of the making of the grant here alleged, is also applicable to the wider proposition announced as Point *Three* of this brief, that there is no sufficient proof of the making of this grant, even considering the secondary proof as admissible. It is also relevant upon the kindred proposition, that the total absence of record evidence of the grant is fatal to the claim for a confirmation under the numerous California cases cited under Point *Three* of the Government brief in the Ortiz Case, No. 20, this term. Without repeating what has been above urged as to the Vigil Index and Archive 1317, as applicable to the broader proposition of no grant, it is believed that they will be given by the court due weight in passing on that proposition, as well as upon this preliminary one on the admissibility of proof.

Even admitting, however, that sufficient proof has been made as to the existence and loss of the archive copy of this grant, claimants have failed to complete their prelimi-

nary proof by accounting for the second original, which under the practice was given to the grantee. No effort was made to account for this. It would naturally be in the custody of the claimant, Mr. Hays, to whom it should have descended from Venturo Trujillo. Mr. Hays went on the stand (R., 94, 98), as a witness in his own behalf. Nothing whatever was asked him as to this second original, as to any search for it, as to its existence, or as to its destruction. It is respectfully submitted that under the most familiar rules of evidence the proper preliminaries to the consideration of the testimony of Aragon and Miranda as to the contents of a written instrument have not been complied with, and this court should therefore, on this rehearing, sustain the objection of the Government and decline to consider that testimony.

A second ground upon which the admissibility of this testimony is denied is found in the fact that it was taken after the proofs were closed and Mr. Proudfit's report on this claim forwarded to Congress. While under the act of 1854 the surveyor-general was not limited as to the time within which he might take his proof and make his report, still upon making his report he exhausted his jurisdiction; and unless the matter was remanded to him for reinvestigation by the Interior Department, as was done in a number of instances during Surveyor-General Julian's incumbency, he was without authority to act. Parties interested with the Government in defeating these private land claims were entitled to consider the report of the surveyor-general, when made, a finality, so far as his office was concerned, and a reopening of the

case by him at any time within his discretion was irregular and improper, unless by direction of the Department of the Interior. There is no pretense that Mr. Proudfit had any such authority in this case. On the contrary, he himself doubted his jurisdiction, "the matter being before Congress" (R., 115).

The provision of the land court act under which this testimony was received (sec. 5) constitutes an exception to the general rules of evidence, and only such testimony taken before the surveyor-general as comes clearly within its language should be received. Under that section the testimony must be such as has been "lawfully and regularly received" by the surveyor-general. It is respectfully submitted that the testimony of neither Aragon nor Miranda was lawfully and regularly received; indeed, it was not received at all, but was simply filed with the surveyor-general, and by him transmitted to the Commissioner of the General Land Office.

As counsel for claimant admits in his brief, page 47:

> Afterwards he [the surveyor-general] took new evidence, but would not open the case to change his decision, but reported the evidence to Congress for its action.

It is contended that this was neither "received" by the surveyor-general within the meaning of the law, nor, if received, was it "lawfully and regularly" received.

This last is insisted upon, not only on the ground that the surveyor-general's jurisdiction was at an end, but also, so far as Miranda's depositions are concerned, for the reason stated above, that he had no power to delegate the taking of testimony to the deputy clerk of a district court.

The following is the section of the act of 1854 under which the surveyor-general took cognizance of this claim in the first instance:

> SEC. 8. *And be it further enacted*, That it shall be the duty of the surveyor-general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico, and for this purpose may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises.
>
> He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity of each of the same under the laws, usages, and customs of the country before its cession to the United States, and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos respectively, and the nature of their title to the land, such report to be made according to the form which may be prescribed by the Secretary of the Interior, which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico, and until the final action of Congress on such claims all lands shall be reserved from sale or other disposal by the Government and shall not be subject to the donations granted by the previous provisions of this act.

It is evident that the purpose of this act was to provide an official who should exercise a more than perfunctory supervision of these matters. The duty imposed was evidently a personal duty. He could not delegate it to others. It was obviously his duty to be present at all hearings affecting grants, to hear the testimony, to see the witnesses, to cross-examine them. No power was given him by statute to issue commissions to take deposition, and none of the instructions subsequently issued by the Secretary of the Interior gave him any such power. The reason was very evident. In matters of this character the Government was entitled to representation. While the investigation of these matters by the surveyor-general of New Mexico can not be said to have been in all or many of these cases of very great thoroughness, still his neglect of duty in no degree detracts from the position that the law required him to perform that duty.

The present record is an illustration of the wisdom of the requirements of the law and the danger involved in disregarding it. Here there were not even interrogatories framed by the surveyor-general, but all that was done was to issue a commission addressed to the deputy clerk of the third judicial district of the Territory of New Mexico (R., 101) directing him to take Miranda's testimony. This was taken in narrative form and returned to the surveyor-general. It was in effect an affidavit. There were thrown around its taking none of the safeguards contemplated by law, and it was in reality a delegation by Mr. Proudfit to a deputy clerk of a district

court of the performance of the duties of the surveyor-general of New Mexico. It is but just to say that he would probably not have done so had he not considered the case as already closed and beyond his jurisdiction, and this *ex parte* proceeding therefore of no consequence. This deposition of Miranda was not lawfully taken and was not received at all, so that it is not within the terms of the statute providing for the admission of testimony "lawfully and regularly received." Even if it be considered technically admissible under section 5 of the land court act, the circumstances under which it was taken—before a person having no interest in getting at the truth and without cross-examination—entitle it to but little weight. It was doubtless because of the well-known fact that much of the testimony presented to the several surveyors-general under the act of 1854 was, even when given before those officials themselves, taken without the safeguards afforded by a court of justice, that Congress inserted as a positive provision in the act of 1891 that that testimony should be given by the court only "such weight as in its judgment, under all the circumstances, it ought to have." It is respectfully submitted that the "circumstances" of the taking of this testimony condemns it to be adjudged under the statute of little weight.

Coming now to the first of the two witnesses, Rafael Aragon (R., 100), it will be noted that this witness starts out with the statement that "the grant was made to Venturo Trujillo and his children in the year 1841 by the alcalde, Damasio Salazar." He thereupon identified the paper introduced as plaintiff's Exhibit A (R., 57) as

the grant thus referred to. This one sentence contains at least two misstatements of fact, which illustrate the fallibility of the recollection of the witness. Witness says that "this Exhibit A was dated in 1841." The document itself shows that it is dated July 2, 1842. If his intention was to say that the governor's order under which this grant was made was dated in 1841, he is again shown to be incorrect, since archive 1317, above referred to, containing Armijo's *borradores* for the year 1841, shows that that order was not made during 1841. Again, witness says the grant by Salazar was to Venturo Trujillo and his children. The document itself shows that it was a grant to Trujillo alone. Two misstatements by a witness in a single sentence of his testimony do not constitute a very strong incentive for placing entire confidence in the rest of his testimony. It is to be noted, further, that the witness does not pretend to say that there was an order signed by Armijo, granting the land, but all he states is that there was a communication from the governor's secretary, Miranda, stating that in obedience to direction of the governor Salazar was to put Trujillo in possession of the tract. Aragon does not testify that he even saw this communication. His testimony therefore is simply to the effect that a written communication, which he does not say he saw, was received by Salazar from Miranda, in which Miranda says that the governor orders Salazar to place Trujillo in possession. This is hearsay several times over. Unless Aragon saw this communication—and he does not say he did—he was testifying to what *was told him* as to the contents of the

document; and since the document was not an order of the governor, but a letter of his secretary stating what the governor had ordered, it was hearsay twice over in that it was the declaration of a third person to the witness as to what a letter from still another person said the governor had done. It was doubtless to obviate the uncertain character of Aragon's testimony that claimants secured the *ex parte* declaration of Guadalupe Miranda (R., 102). Mr. Miranda, as an ex-official of the late Mexican Government, was one of the class of witnesses to whom reference was made so often in the California cases. In those cases this court laid down the following as a rule of evidence (*Luco Case*, 23 How., 515):

> It may be received as a general rule of decision that no grant of land purporting to have issued from the late government of California should be received as genuine by the courts of the United States *unless it be found noted in the archives* or *the expediente, or some part of it be found on file among the archives where other and genuine grants of the same year are found;* and that owing to the *weakness of memory with regard to the dates of grants signed by them, the testimony of the late officers of that government can not be received to supply or contradict the public records or establish a title of which there is no trace to be found in the public archives.*

It was recognized by this court that these ex-officials were most unfavorably disposed toward the new government which had come in by power of the sword and had taken away from their nation a vast expanse of territory and from themselves lucrative and influential positions. To say that these officials—prejudiced as they were

against the new sovereign and predisposed as they were in favor of their countrymen left in the conquered territory—might come into court and establish grants where there was not a scintilla of record proof to support it was to place the lands of the nation at the disposal of its enemies. This the decisions of this court declared it would never do, in a long line of cases, among which are the following:

Bolton Case, 23 How., 347.
Castro Case, 24 How., 346.
Case of Knight's Administrator, 1 Black., 228.
Neleigh's Case, 1 Black., 298.
Romero's Case, 1 Wall., 743.
Peralta's Case, 3 Wall., 434.

It is respectfully insisted that the rule established in these California cases is peculiarly applicable to this case, and on the ground stated in the Luco Case, *supra*, the "weakness of the memory of these officials." This deposition of Miranda was taken in 1873, thirty years after the alleged occurrence, and at a time when he himself admits that "it has been so long since he saw the original papers in the case that without refreshing his memory by some of them he could not state minutely the facts and particulars of the grant. His memory is evidently vague on some of the matters. For instance, he had no recollection as to whether the grant was dated in 1841 or 1842. He does not remember the boundaries of the grant. He states that the decree directing the alcalde to place the petitioner in possession was signed by himself and Armijo, whereas Aragon, as above pointed out, says that it was a communication from Miranda, in which

Miranda says: "I am directed by his excellency the governor to say," etc., a phraseology entirely inconsistent with the supposition that Armijo signed the communication.

Miranda further says that the original papers and the return of the alcalde were thereupon deposited in the archives at Santa Fe. Aragon says the governor's order was deposited in the archives of the office of the alcalde of San Miguel del Bado. These are a few of the discrepancies that point out the wisdom of the rule that there must be archive corroboration of this character of evidence to justify a confirmation. It is incredible that after thirty years—with no occasion meanwhile to remember the circumstances, and with no memoranda at hand to refresh his recollection—this witness could have remembered one of his numerous official acts with the detail here set forth. The fact that while disclaiming any ability to state "minutely the facts and particulars of this grant," he insists that "the papers were full and complete and the grant perfect according to the laws of Mexico," simply adds the suspicion of mendacity to a one-sided deposition that might otherwise be passed over with the charitable reflection that the witness had confused the transaction with some other.

It is well said by the court below in its opinion (R., 116) that the mere memory of the secretary of the Territory, without any note or memorandum at all, thirty years after the alleged transaction, did not justify it in giving to the transaction the construction contended for by claimants. It is believed that were there nothing in the case to discredit the testimony of Miranda and Aragon, that testi-

mony, even if admissible, would fall far short of justifying a confirmation. However, the most convincing proof in this record that Aragon and Miranda, either willfully or otherwise, swore falsely is the grant document tendered by claimants as their Exhibit A. This shows beyond peradventure that when Damasio Salazar made this concession in 1842 he was not acting under any order of the governor; he was not, as counsel contend, engaged in giving juridical possession, an act that alcaldes were often called upon to perform under the Mexican and Spanish systems, but was acting on his own responsibility and in the exercise of a function arrogated to himself as one invested with power to alienate the public lands. It will require only a glance at the list of grants made during the Mexican dominance in New Mexico as set forth in the supplemental brief for the United States in the case of *Chaves* v. *United States*, No. 14, this term, to show the great variety of officers who attempted to alienate land. The governor, the territorial deputation, the political chief, the departmental assembly, the prefect, the alcalde, the town council, the *juez de paz*, each and all of them took a hand at disposing of the land of the nation. There was no official so humble but felt justified at one time or another in assuming the prerogatives of the supreme Government. This court has had to deal with several of these cases. The *Vigil Case* (13 Wall., 449) was a departmental assembly grant, and the *Crespin Case* (168 U. S., 208) involved a grant made by a prefect. Both of these claims this court rejected because of want of power in the granting officer.

The eminent justice of the peace who made the grant now under discussion was no novice at the art, despite counsel's naive assumption in his brief (p. 9) that "Salazar would not probably have undertaken to make a grant on his own responsibility," because Armijo was "a very arbitrary man." The Government offered to prove in this very case (R., 44, 51) that Damasio Salazar, this alcalde, made concessions of land at that time to numerous parties in the vicinity, claiming to have the right to do so; and the Government further offered to prove (R., 51) that Salazar never claimed in this case nor in any other of the cases in which he acted the right through Governor Armijo to make a grant to this man, or to any other man, but claimed the right of his own free will. The court below saw fit to limit the right of the Government to make this character of proof, although claimants (R., 93) had gone fully into the statements of Salazar as to this very transaction.

It is interesting, however, to note historically from the list of grants in the supplemental brief in the Chaves Case above referred to that at least one of the alcalde grants therein referred to was made by this same Damasio Salazar, being for the Chupaderos de las Lagunitas tract, in the immediate vicinity of the grant here claimed. In that case Salazar made his granting decree on December 18, 1839; and it is to be remarked that the title papers there presented, which are almost duplicates of that here presented, were adjudged of no validity by the court below on January 25, 1898, on the ground that it was a mere alcalde grant and that officer had no power to

act in the matter. The judgment has been acquiesced in and the decree of rejection is now final. (See also R., 75, as to the making of the grant by Salazar.) It will thus be noted that the gentle art of disposing of the nation's property was not unknown to Mr. Salazar.

It is claimed, however, by plaintiffs that the document presented is an act of possession executed by Salazar pursuant to an order of the governor and not an independent grant. This brings us to a consideration of this document.

It will be seen that, so far from being in the form of an act of possession issued pursuant to a superior order, this instrument is in the exact form followed in every grant made by competent authority. A proceeding for a grant under Spain or Mexico was always initiated by a petition, followed, after investigation by the governor, by a decree. In this case Trujillo petitions Salazar for a grant of the place and land commonly called Ojito del Apache. He states the reasons why it ought to be granted to him: he has a large family and he will thereby be enabled to support them and to give tithes to the church. It is incomprehensible why Trujillo would have gone through all this procedure had he already a grant of the land from Armijo. Why ask Salazar for it? Why state reasons in favor of a grant if he already had a grant from the governor? What discretion had Salazar but to obey the governor's order, if there were such an order? Why, therefore, invoke this discretion if he had none? Asking these questions is answering them. Salazar was appealed to by Trujillo because the latter desired him to make him a donation. Otherwise he would have cited him the

governor's order, which was the law of the case, and kept his own counsel about his large family and his tithes.

The alcalde proceeds thereupon to find that the petition is "a just one." What right had he to consider the justice or injustice of the petition, if, as Miranda testifies (R., 102), he had in his possession an order directing him "to place the petitioner in possession of the lands granted as aforesaid?" The alcalde then proceeds to make him "a donation." According to Miranda, the governor had already done so. Why should the alcalde undertake to donate to Trujillo what the head of the department had already donated to him? The alcalde recites that, acting in conformity with the supreme decrees, he makes Trujillo "the said donation in the name of God and the supreme Mexican nation." The supreme decrees evidently refer to the decrees of the supreme Government. The departmental government was always referred to as the superior government, whereas the national Government was the supreme Government. (See title papers in *Catron* v. *United States*, No. 34, this term; also decree of June 13, 1843, secs. 135, 140, 141; Reynolds, p. 242.) Indeed, in this very same document the alcalde proceeds to refer to the Mexican nation as the "supreme Mexican nation." (R., 58.)

The attempt by claimants to distort this into a reference to an order of Armijo is too transparent to entitle it to much consideration. Had such a reference been intended it would have referred either to the superior orders or decrees, or more probably, to the specific order itself. A minor official acting under an order from

a superior officer would, as a matter of first impulse, quote that order as his authority. This is illustrated in the act of possession of the alcalde found in the case of *United States* v. *Elder*, No. 35, this term, where the alcalde had a specific order to give possession such as claimants contend was given in the case at bar. That document shows that the first thing the alcalde does in making up his statement of the act of possession is to recite the order of the prefect under which he is acting.

The whole act of possession in that case is valuable as a basis of comparison with this. It illustrates the difference between a possession given by an alcalde pursuant to superior order and an independent grant made by an alcalde as in the case now under discussion, and it emphasizes anew the fact that this Ojito del Apache grant is an original donation from an alcalde, pure and simple. The term "supreme decrees," manifestly does not refer to an order from Armijo for another reason. Armijo had, according to Miranda and Aragon, made only one decree, so that a reference to "decrees" could not have referred to what Armijo had done, but to some laws of the supreme government which the alcalde considered gave him power to act in such matters. Laws were often called decrees, as indeed they were. (Reynolds, pp. 203, 223, 224, 238, 239, 240, 241, 243.) Claimant's counsel admit (brief, p. 13) that Mexican laws were sometimes called decrees, and it is evident that this is what Salazar had in mind.

Further, Salazar says: "Acting in conformity with the supreme decrees, I have made him a *donation*," etc. The order of Armijo to which Miranda testifies does not, it

will be noted, order Salazar to make Trujillo a donation—Armijo, says Miranda, had already done that—but to give Trujillo possession. The "supreme decrees," by virtue of which Salazar made the donation, therefore must have been something other than the governor's order, for that order had nothing about making a donation.

But on the meaning of these words, "supreme decrees" we have the testimony of Aragon, the person who himself wrote them. Certainly if they referred to an order of Armijo, Aragon, who wrote them with his own hand, would have known it, and yet when Aragon was confronted with the paper, Exhibit A, by Surveyor-General Proudfit (R. 101), the following ensued:

> Q. Examine the paper marked "Exhibit A" and state whether it contains any allusion to the order you have mentioned as given by Governor Armijo.
>
> *A. I believe it contains none.*
>
> Q. Why, in writing the grant paper "Exhibit A," did you not make some allusion therein to the order of the governor?
>
> *A. I presume it was omitted by mistake.*

Alcalde Salazar goes on in his grant (R., 58) to impose conditions on his grantee, requiring him to observe "the requirements which our laws provide, under the condition and restrictions that if he does not provide a protection to prevent the damages which may result to him he is under obligations to bear them, it being commons and pasture grounds of the inhabitants of this precinct."

He then goes on to fix the boundaries of the grant, and after some further formalities the instrument closes.

There is no mention whatever of the delivery of juridical possession by the alcalde, the going of the alcalde to the premises, the pointing out of boundaries, the plucking of grass and the throwing of stones, the taking of the grantees by the hands and leading them over the lands, and the innumerable other formalities which under the Spanish and Mexican customs were invariable adjuncts of the investiture of possession. (See *Elder Case*, No. 35, this term, and the acts of possession in other cases recently decided from the Court of Private Land Claims.) If, as claimants allege, the governor ordered Salazar to deliver possession, and this was his delivery of possession, it is passing strange that he makes no mention of delivering possession; and that the whole document treats of making a grant, something the governor, according to Aragon and Miranda, had done long since.

If Salazar was trying not to make a grant, but to give possession of a grant already made, he ignominiously failed both in omission and in commission; he did make a grant; he did not confer judicial possession. He was a typical sinner in that he "left undone the things he ought to have done, and did the things he ought not to have done." As a matter of fact, however, Salazar's only offense was that he attempted here to make a grant when he had no authority so to do. Claimant's oral testimony in this case at every point conflicts with the written instrument presented as his Exhibit A. The testimony of Miranda can not stand in the face of that instrument. One or the other must fall, and it is not believed that this court will be any more inclined than was the

court below to give preference to the recollection of Secretary Miranda after a lapse of thirty years over the plain and unambiguous recitals of a written instrument contemporaneous with the transaction inquired into.

IV.

Assuming that a grant was made by Governor Armijo, as alleged, there is no proof of the character of the grant sufficient to enable the court to say that it is a claim within its jurisdiction.

The only proof of the character of the grant is found in the depositions of Aragon and Miranda. Aragon (R., 100) describes the governor's order as being one in which the alcalde is ordered to "proceed to the place called the Ojito del Apache, and will there place the petitioner, Venturo Trujillo, in possession of that land." It is manifest that an order to place a party in possession is not necessarily a title in fee. The possession conferred may have been a provisional or temporary one, such as was given in *Bergere's Case* (168 U. S., 66). It might have been based upon a mere permit to pasture, such as in the *Zia Case* (168 U. S., 198). It might have been upon condition as in *Cessna's Case* (169 U. S., 187). Yet in each of the three cases just cited this court held the claim presented not entitled to confirmation, notwithstanding possession conferred, because not titles such as claimant "would have had a lawful right to make perfect" had there been no change of flag. The character of the concession, as indicated by Aragon, does not take the case out of either of the conditions found fatal in the Bergere, the Cessna, and the Zia cases.

The other witness, Miranda, expressly disclaims (R., 103) any recollection of the facts and particulars of the grant, so that his testimony does not throw any light upon this particular proposition. It is true that Miranda, at the conclusion of his testimony, says, notwithstanding the fact that he can not recall "the facts and particulars" of the grant, that "the papers were full and complete and the grant perfect, according to the laws of Mexico." This is a mere conclusion of law, however, and is not evidence. Its value, even as an expression of law coming from Miranda, is impaired by the fact that it is manifestly incorrect. This grant could not be "perfect according to the laws of Mexico"—the law of 1824 and the Regulations of 1828—without the approval of the departmental assembly. It is not pretended that such approval was ever had in this case, so that Miranda was as far astray on his assumption of law that the grant was "perfect" as he was in his statements of fact as to the making of a grant at all. The fact that the testimony of these and other witnesses refers to a "grant" to Trujillo does not establish its character. The question still remains, What kind of grant was it?

The Court of Private Land Claims is a court of limited jurisdiction.

> *Ainsa* v. *United States*, 161 U. S., 222–223.
> *Cessna* v. *United States*, 169 U. S., 187.
> *Hayes* v. *United States*, 170 U. S., 637–647.

Before parties can secure a confirmation at its hands, they must bring themselves by their proof within its jurisdiction. Until they do this the court is powerless to act. It seems proper, therefore, to call attention to a

few of the provisions of statute under which, and only under which, the court below is permitted by law to proceed.

Under section 6 of the act of March 3, 1891, parties are required to set forth in their petition—and since they must allege it they must prove it—"the *date and form* of the concession, warrant, or order of survey."

In this case there is no definite proof as to its *date*. It was made some time during 1840 or 1841, perhaps 1842. No serious attempt was made to allege or prove its *form* so as to enable the court to decide whether it conveyed the fee or something short of the fee. For all that appears to the contrary, it might have been a mere license to occupy, which has uniformly been held to be a character of title not entitled to recognition.

De Haro v. *United States*, 5 Wall., 599.
Serrano v. *United States*, 5 Wall., 451.

It might, for aught that appears to the contrary, have been a mere permit to pasture, such as was held in *Zia* v. *United States* (168 U. S., 198) to be not entitled to confirmation under the act of 1891. The definition of the word "grant," as given in the case of *Strother* v. *Lucas* (12 Pet., 436), is broad enough to have included either of these. *Non constat*, further, but that it was a grant made upon conditions proof of performance of which "within the time and manner stated in the concession" is made by subsection 8 of section 13 of the act of 1891 a prerequisite to a confirmation.

In the Jose Garcia Case, a grant claim decided by the Court of Private Land Claims since that here appealed from, the subject here discussed has been considered very

fully. In that case the recitals of a grant to the predecessors in interest of claimants were not in private deeds, but in grant documents, in one or two instances over the signature of the governor of the province itself. The recital of a grant to Garcia was made in these not once, but in three separate and solemn instruments signed by the *alter ego* of the Crown himself; and yet the Court of Private Land Claims held upon these facts that the claim could not, under the wording of the act of 1891, be sustained.

A copy of the opinion in that case, which is entitled *Mariano S. Otero* v. *United States*, No. 92, is attached to the brief for the Government in the cases of *J. Francisco Chaves* v. *United States*, Nos. 38 and 39, this term. It is believed that this will be found quite helpful upon this proposition, and that this court must reach the same conclusion in this case as did the court below in the Jose Garcia Case: that there is no evidence showing or tending to show the character of the grant—if there was a grant—and that the claim must be rejected upon this ground if upon none of the others urged in this brief.

V.

The possession shown by plaintiffs does not justify the presumption of a grant from competent authority.

Claimant's counsel devotes a large portion of his argument to quotations from the testimony establishing possession of a portion of the tract in question by the alleged grantee and his successors in title. It is not denied that there is some proof of possession by Trujillo of a part of

the premises in question prior to the treaty, but it is denied that this possession was either continuous or exclusive, both of which qualities are essential to prescriptive title. As was said by this court in the case of *Whitney* v. *United States* (167 U. S., 529, 546):

> The claimant also relies upon a long-continued adverse possession of this land, maintained for nearly one hundred and seventy years from the date of the grant, and nearly eighty years from the date of the *testimonio* issued by the *alcalde mayor*, de Baca. Had it been shown that this possession was complete, adverse, and undisputed during the whole life of this grant, such possession would probably be regarded as complete evidence of title. Nor are we disposed to deny that the fact that the Luceros and their descendants pastured stock upon these lands is evidence of such possession; but, in order to make it of any particular weight, it should be shown to have been exclusive and that no other person pastured or had the same right to pasture upon these lands.

See also *Bergere* v. *United States* (168 U. S., 79, 80).

A few extracts from the record will suffice to show the very loose character of the possession held by Trujillo. Witness Pablo Lucero knew the Ojo del Apache from 1840 to 1855, his residence being at Chupaderos, which is adjacent. On his direct examination (R., 30) he was asked as to the condition of the spring from 1840 to 1855, and he stated that there was no house there, no land cultivated or broken, and no one living there during that period; that Trujillo never lived at the Apache Spring, but at San Miguel, which is many miles away. He further testified that in going there in 1855 to take up his residence

it was found that there were no improvements of any character at the spring, no houses, nor ruins of any houses, and that the property was at that time known as public land. It is true that this witness was at the spring itself only once or twice prior to 1855, but he has since the year 1840 lived continuously at Chupaderos, which is about 4 miles from the spring. In a country community anything that happens within a radius of 4 miles is a matter of common knowledge in a very short period, and had Trujillo occupied this tract for any length of time, or made any improvements on it, or claimed it exclusively, it would have been known by witness Lucero. Witness Juan de Jesus Jaramillo (R., 38) also testified to knowing the Ojo del Apache in 1840, and again in 1852. At neither time, says witness, was Trujillo in possession, and in the spring of 1852 no one was living there, there were no houses, nor corrals, nor acequias. Trujillo was not living there, but at San Miguel. His family did not live there and he was neither cultivating nor pasturing there, and witness never knew of his living there at any time (R., 39). This witness further shows that so far from Trujillo's having the number of cattle or sheep to which claimant's witnesses refer as pasturing on this property, he was a poor man, one of comparative insignificance in his community. It is hardly probable that such a man would have been singled out by Armijo as an object of his favor and official generosity to the extent of about 50,000 acres of public lands. As was said in the Cambuston Case (20 How., 59):

> In the examination of the evidence in this case we have found it very difficult to resist a suspicion

as to the *bona fides* of the grant in question. It is a pure donation, made without pecuniary consideration or meritorious services rendered to the Government of Mexico.

See also the *Roland Case* (7 Wall., 746).

Nicholas Apodaca, another witness examined for the Government (R., 42), has known the property in question since 1842, and was herding his uncle's flocks on it in the months of May, June, July, August, and September, 1842. He testified that Trujillo came there during that period, but stayed there only about two or three days. This was evidently about the time he received the grant from Alcalde Damasio Salazar. Witness seemed to be uncertain about the month, but is positive that it was in the year 1842. He says that Trujillo did not return to the Spring; that he never lived there afterwards; that he never used it as a pasture, as he never had any animals, and, on the contrary, it was used by various other people as a pasture ground. This witness, who lived in the immediate vicinity, further testifies that Trujillo at the time of his death was living at San Miguel, and he and his family had lived there from 1842 on to the date of his death. Manuel Apodaca, examined on the part of the Government (R., 48), also testified that he first knew the Apache Spring in 1842, and "knew it vacant," and after that, when he knew it, no one was living there, there were no houses, no cultivated lands, and no corrals. In answer to a question as to its use for pasturage, witness said it was so used by "anybody; they were common pasture; so many herders pastured there that I did not know who they were," but Trujillo was not among them

(R., 51). This witness also testified to certain statements made by Trujillo in his presence in 1842 as to this property, which are binding on claimant, a privy in estate to Trujillo. These throw some light on the source from which Trujillo claimed title, as, for example, this statement (R., 50):

> Well, sir, I went to work at that land at the Ojo del Apache *that was given to me by Damasio Salazar*, but was not successful in it, because the water is not enough. * * * The $3 that I paid to Don Damasio Salazar for that *hijuela* was worth more than the whole Ojo del Apache.

The record further shows (p. 91) that the extent of the occupation was exceedingly limited, only a few hundred varas being used.

From all this testimony it will be seen that the possession held by Trujillo was very far from being extensive, continuous, or exclusive prior to the treaty. Indeed, it could not be exclusive, since under the very terms of the alcalde grant it is expressly recited (R., 58) that the land in question is "commons and pasture ground of the people of the precinct." Since the treaty the public surveys of the United States have been extended over the tract, and a number have settled thereon, and in some instances secured Government patents. (See Answer of Adlon et al., R. 18.) One family, the Montoyas, have been living on this tract, according to the testimony of the claimant Hays himself (R., 98), thirty or forty years, under claim of title different from his own. (R., 97.)

Viewed in its most favorable light, therefore, the possession which plaintiffs attempt to prove was one for

only the four years intervening between 1842, the date of the paper marked "Exhibit A," and the date of the American occupation of New Mexico, or six years up to the date of the treaty of 1848. Adverse possession against an individual, even when exclusive and continuous, raises no presumption of a grant upon a duration of only four or six years, and if time ever ran against the Mexican or Spanish Governments—a proposition from which the appellees in this case most strongly dissent—it never presumed a grant on six years' possession.

This question of grants presumed from long continued possession is discussed by this court in the case of *Hayes* v. *United States* (170 U. S., 647), where it is held that even if time ran against the Mexican sovereignty the term of ordinary prescription was ten and of extraordinary prescription was thirty years, neither of which periods had run in this case.

Upon the general proposition that time did not run against the Mexican sovereignty, counsel for the Government desires to call the attention of this court to the brief filed on behalf of the United States in the cases of *Chaves* v. *United States*, Nos. 38 and 39, this term, and above referred to. Since this case and those will be submitted to the court about the same date, it does not seem necessary to repeat here the considerations there urged to support the proposition that possession under the Spanish or Mexican Governments could never ripen into a prescriptive title against them. Upon this general proposition the following authorities are instructive:

Orozco's Legislation and Jurisprudence on Public Lands, Vol. II, p. 1007.

Id., Vol. II, Title III, p. 993 et seq.
Hall's Mexican Law, sec. 53 et seq., also secs. 612, 639.
Crespin v. *United States*, 168 U. S., 208.
Hayes v. *United States*, 170 U. S., 637.
Ely's Administrator v. *United States*, 171 U. S., 233.

Even less worthy of serious consideration is the proposition upon which counsel seems to insist that possession since the treaty may be considered as a basis for presuming a grant. The validity of this claim must be adjudged as of the date of the treaty. It is announcing a novel proposition indeed, however, to urge that a citizen of this country may, by mere possession, acquire rights in the soil upon which he may challenge the title of the Government. The reason of the rule of *nullum tempus* as applied to our system of government is clearly stated by this court in the case of *Lindsey* v. *Miller* (9 Pet., 672), where it is said:

> It is a well-settled principle that the statute of limitations does not run against the State. If a contrary rule were sanctioned, it would only be necessary for intruders upon the public lands to maintain their possessions until the statutes of limitations shall run, and then they would become invested with the title against the Government and all persons claiming under it. In this way the public domain would soon be appropriated by adventurers. Indeed, it could be entirely impracticable, by the use of any power within the reach of the Government, to prevent this result. It is only necessary, therefore, to state the case in order to show the wisdom and propriety of the rule that the statute never operates against the Government.

The following cases repeat and emphasize this most salutary rule:

Gibson v. *Chouteau*, 13 Wall., 99.
Weber v. *Harbor Commissioners*, 18 Wall., 70.
Sparks v. *Pierce*, 115 U. S., 408.
Redfield v. *Parks*, 132 U. S., 239.

So also in *Hayes* v. *United States* (170 U. S., 653) it is said by this court:

> Whatever may have been the rule as to the operation of prescription against the Spanish and Mexican Governments, it did not run after the treaty against the United States.

But even if a grant from competent authority could be presumed upon the character and length of possession shown by this record, such a presumption can not be indulged here, because the record shows the source of the title to be in the alcalde grant, and thus precludes any presumption on the subject. The void concession by Alcalde Salazar accounts for the possession proved and furnishes a plain and unmistakable cause to which it is referable. The facts on this point bring the case squarely within the rule laid down by the supreme court of California in the well-considered case of *Nieto* v. *Carpenter* (21 Cal., 455), where it is said:

> Presumptions are only indulged to supply the absence of facts. There can be no presumption against ascertained and established facts. The presumption, therefore, of a grant from the long possession of land is repelled and destroyed by the production or proof of the instrument under which the possession was held.

But, whatever else may be said on this proposition, it is confidently submitted that a title resting on presumption from long continued possession is not such a claim as the Court of Private Land Claims has jurisdiction to confirm.

An even casual examination of the act of 1891 will show that its provisions do not confide to the Court of Private Land Claims the duty of confirming claims resting upon mere possession. Thus the provision of section 6 that "any person * * * claiming lands within the limits of the territory derived by the United States from the Republic of Mexico * * * by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm," may present his claim, is utterly inconsistent with the theory that anything but a written muniment of title can constitute the foundation of a suit in the Court of Private Land Claims.

In *Lafayette et al.* v. *Blanc* (3 La. Ann., 59) the language construed was identically the same contained in this act, being "the title to lands claimed by virtue of incomplete French or Spanish 'grants, concessions, warrants, or orders of survey,'" and this was held by the court not to confirm any claim unsupported by written evidence of title emanating from the French or Spanish Governments. (See also *State* v. *Cardinas*, 47 Tex., 250.)

The act of 1891 is, in its description of the class of titles which it covers, very similar to the act of May 26, 1824 (4 Stat. L., 52), the wording of the latter being "by virtue of any French or Spanish grant, concession, warrant, or order of survey legally made, granted, or issued

by the proper authorities." In cases arising under that act, as reenacted by the law of July 17, 1844 (5 Stat. L., 676), it was held that there was "no power to act upon evidence of mere naked possession, unaccompanied by written evidence, conferring or professing to confer a title of some description."

United States v. *Powers's Heirs*, 11 How., 569.
United States v. *Rillieux's Heirs*, 14 How., 188.

The further provisions of the act of 1891 are still more conclusive of the proposition that the court can not proceed upon *mere* naked possession. Thus, section 6 further requires the petition to state the *date* and *form* of the grant, possession, warrant, or order of survey.

The act of 1824, above referred to, contained a like provision, and its purpose is discussed in *Moore's Case* (12 How., 216), where it is said that this is required "in order that it may be seen whether the officer making the concession or sale had power to do so at the time it was done." But if grants may be confirmed on allegations and proof of mere possession this provision of statute becomes nugatory and senseless, as also the further provision of section 6, which requires that the petition state "by whom" the grant is made.

Further, under section 8, permission to invoke the jurisdiction of the court is extended only to those holding under a *title* derived from the Spanish or Mexican Government. This *title* must be one "lawfully and regularly derived" from one of the Governments just mentioned (subsection 1 of section 13), and not only that, but it must be made to "appear" that it is so derived. (*Hayes* v.

United States, 170 U. S., 637.) It must further be made to "appear" that every condition and requirement, either antecedent or subsequent, contained in the original grant has been performed in the time and manner stated in such grant. All these provisions of the act of 1891 show that it was not intended to include claims resting upon mere possession; and the provisions of the statute are equally exclusive of grants resting upon naked possession, whether such possession shall have extended back a half dozen years or a century before the treaty.

If there were any doubt upon this proposition it is, however, dispelled by the fact that Congress in the act of 1891 has not only withheld from the Court of Private Land Claims the power to recognize anything short of a paper title, but has actually confided to another department of the Government the power, under certain restrictions, to recognize and provide for possessory claims. Thus, under section 16 of the act as amended by the act of February 23, 1893 (27 Stat., 47), provision is made for the protection of anyone who has, through himself, his ancestors, grantors, or their legal successors in title or possession, been in the continuous, adverse, actual, *bona fide* possession of land for twenty years next preceding the time of survey of the township wherein situate. Under this section, upon making proper proof, such possessors of land may receive a patent therefor to an extent not to exceed 160 acres. A similar provision is made in section 17 of the act as amended by the act of February 23, 1893, above referred to, for persons claiming title in townships already surveyed, who had been

in "actual, continuous, adverse possession" of lands for twenty years next preceding such survey.

These two sections measure the degree of recognition which Congress is thus far willing to accord to claims resting upon mere possession, although such possession may have been sustained for years under the former government. To secure more liberal recognition, parties must either present to the Court of Private Land Claims "a grant, concession, warrant, or order of survey" lawfully and regularly derived from the Government of Spain or Mexico, with which they can connect themselves, or, if unable to do this, they must appeal to the legislative department of the Government.

It is respectfully submitted that the decree of the Court of Private Land Claims dismissing this petition and rejecting the claim should be affirmed.

Respectfully submitted.

JOHN K. RICHARDS,
Solicitor-General.
MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.
WILLIAM H. POPE,
Special Assistant to the Attorney-General.

HAYS *v.* UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 19. Argued October 10, 1899. — Decided December 4, 1899.

Under the laws of Mexico prior to 1848, an alcalde had no power to make a grant of public lands.

Where petitioner produced oral testimony tending to show a grant of lands by the governor of New Mexico, and an order upon the alcalde to put the grantee in possession; and also gave evidence tending to show that these documents were afterwards lost or destroyed, and at the same time produced a grant by the alcalde in which no reference whatever was made to a prior grant by the governor, it was *held* that the grant of the alcalde was inconsistent upon its face with the alleged grant by the governor, and with the other circumstances in the case, and that the claim was properly rejected by the Court of Private Land Claims.

Possession to land since the treaty of Guadalupe Hidalgo, in 1848, will not of itself give a valid title to land; nor will it create the presumption of a valid grant where a void grant appears to have been made; or in case the surrounding circumstances are incompatible with the existence of a valid grant.

THIS was a suit instituted by the appellant in the Court of Private Land Claims for the confirmation of a grant of land situate in the county of San Miguel, New Mexico, known as

the "Apache Springs," or "Ojo del Apache" grant, and alleged to contain eleven square leagues, or 47,743 square acres.

The amended petition alleged, substantially, that prior to June 2, 1842, Manuel Armijo, then governor of New Mexico, granted the tract in question to Venturo Trujillo, in accordance with his petition for the same, and by decree directed the constitutional alcalde of the demarcation of San Miguel del Bado to place the petitioner in possession; that said alcalde subsequently made return that he had placed the petitioner in juridical possession of the lands as directed, and that this return with the original papers were duly deposited in the archives of New Mexico.

Petitioner further alleged that he had neither the original of said petition, nor a copy thereof, nor the decree of the governor, nor the return of the alcalde, in his possession; and that neither of them is in the possession of the surveyor general of New Mexico; but he alleged that the archives of New Mexico, previous to the occupation of the Territory by the United States, and for some time thereafter, were kept carelessly, and many of the papers and documents, including those therein mentioned, were lost and destroyed; and prayed that he might be permitted to give secondary evidence of the petition, decree and order of the governor, and of the return of the alcalde.

He further alleged that on July 2, 1842, Damasio Salazar, a justice of the peace of the demarcation of San Miguel del Bado, now embraced within the limits of the county of San Miguel, acting in conformity with the laws and customs of Mexico, placed Venturo Trujillo in possession of the tract so granted; that he entered into such possession and occupied the same for about four years from July, 1842, and that, by sundry mesne conveyances from him to parties who continued such possession, the petitioner, by virtue of the original grant and these mesne conveyances, now claims the ownership of the whole of said tract; and that ever since the year 1842, and at the present time, the said grantee, Venturo Trujillo, and his legal representatives and those claiming under him and them, have held, claimed, used and

Counsel for Parties.

occupied, owned and grazed upon, peaceably and notoriously, the whole of said lands.

That no survey of the tract has ever been made; that petitioner cannot state the amount, but that it does not exceed eleven leagues; that one Taylor, who was then the owner of the grant and one of the mesne grantees, made application to the surveyor general of New Mexico for the approval of said grant under the law of July 22, 1854, which was rejected December 19, 1872, upon the ground that the grant was made by a justice of the peace, who, under the laws of New Mexico, had no power to make a grant of lands; that subsequently, and upon September 22, 1873, application was made to the surveyor general to reopen the application for confirmation, and to receive new testimony which had been discovered. The application was granted, so far as to permit the new testimony to be introduced, and the depositions of Guadalupe Miranda, secretary of New Mexico during the adminstration of Governor Armijo, and of Rafael Aragon, secretary of Damasio Salazar, the constitutional alcalde who placed Trujillo in possession, were taken and made a part of the petition. The application was again rejected by the surveyor general upon the ground that the depositions being based entirely upon memory were insufficient to establish a grant by the governor; that Miranda and Aragon are now dead; that the grant has, since July, 1842, remained in the possession of the grantee and his assigns, and has been generally recognized.

No question was made with regard to the intermediate conveyances to the petitioner or of the other formal allegations bringing the case within the provisions of the act establishing the Court of Private Land Claims.

The case was tried by the court upon the pleadings and evidence, the claim rejected, and the petition dismissed by a majority of the court. Petitioner thereupon appealed to this court.

Mr. T. B. Catron for appellant.

Mr. William H. Pope for appellee. *Mr. Solicitor General* and *Mr. Matthew G. Reynolds* were on his brief.

Opinion of the Court.

MR. JUSTICE BROWN, after making the above statement of the case, delivered the opinion of the court.

The only documentary evidence of title which appears in the record is the following translation of a grant purporting to have been signed by Damasio Salazar, described therein as a justice of the peace. In the original Spanish he is described as *Jues de pas* (paz) and subsequently as "*alcalde*":

"Translation.

Seal fourth. (Seal.) One fourth real.
For the years eighteen hundred and forty and eighteen hundred and forty-one.

"In this second demarcation San Miguel de Bado, on the second day of the month of July of the present year eighteen hundred and forty-two, before me citizen Damasio Salazar, justice of the peace of said precinct, personally present appeared citizen Bentura Trujillo, citizen and resident of the first demarcation, soliciting the place and land commonly called the Ojito del Apache, to establish, in company with his children, a farm on which he believes he will have the means necessary for the support of a large family, and to give tithes (illegible) and the holy church their corresponding portions, and I, said alcalde finding the petition to be a just one and acting in conformity with the supreme decrees, have made him said donation in the name of God and the supreme Mexican nation, so that as a good compatriot he may make use of it, observing the requirements which our laws provide, under the condition and restrictions that if he does not provide a protection to prevent the damages which may result to him, he is under obligation to bear them, it being commons and pasture grounds of the inhabitants of this precinct; and the boundaries corresponding to said grant are on the north the mesa; on the south the old road to Los Chupaines; on the east the Mesa de los Chupaines; and on the west the hills bordering on Cañoncito de la Lagunita; and in order that this foregoing instrument may have the force and validity by law required the aforesaid Trujillo requested me

to interpose my authority and judicial decree, and I, the said justice, declared that I would interpose, and did interpose, as far as I am authorized by law, those of my attendants signing with me with whom I act by appointment, for the notorious lack of a notary public, there being none of any kind in this department. In form of law, to all of which I certify.

DAMASIO SALAZAR.

Attending: RAFAL. ARAGON.

Attending: SALVADOR GONZALES.

"And it is given on this ante-stamped paper, there being none of the proper stamp.

SALAZAR."

1. The theory of the petitioner is that, some time prior to the date of this document, there was a grant by Governor Armijo to Venturo Trujillo, in accordance with his petition, and that the governor by his decree directed Salazar, the alcalde, to deliver to the petitioner juridical possession of the land; that said alcalde afterwards made return to the effect that he had done so, and that these documents were deposited in the archives of New Mexico, but were subsequently, and about the time of the occupation of the territory by the United States, lost and destroyed. In support of this theory he produced the deposition of Guadalupe Miranda, secretary of the Territory of New Mexico during the administration of Governor Armijo, taken November, 1873, to the effect that he was acquainted with Trujillo, and remembered that, about the year 1841 or 1842, he petitioned the governor for this grant of land; that the governor granted the petition, issued a decree to that effect, and directed the constitutional alcalde to place him in possession, "which said decree he signed as governor of the territory, and I signed the same along with him as secretary of said territory;" that the alcalde subsequently made return that he had placed the petitioner in possession, in obedience to the decree of the governor, and that these papers were duly deposited in the archives of New Mexico and remained under the charge of deponent as public records, he being at that time the legal custodian, and that

from this time Trujillo was considered and reputed as the lawful owner and possessor of the lands by the people in general, as well as by the territorial authorities.

Petitioner also produced the deposition of Rafael Aragon, taken about the same time, a man seventy-seven years of age and a laborer by occupation, who testified that the grant was made to Trujillo and his children in the year 1841 by the Alcalde Damasio Salazar; that witness was at the time the secretary of the alcalde, wrote the grant, and that the same was made under and by virtue of an order of the governor. In his own words he says: "The order referred to was a written one addressed to said Alcalde Salazar through Guadalupe Miranda, secretary of state of the government, and was of about this tenor, to wit: I am directed by his excellency the governor to say to you that upon the receipt hereof you will proceed to the place called the Ojito del Apache and will there place the petitioner, Ventura Trujillo, in possession of that land. Salazar was addressed in this communication as the alcalde of the second demarcation of San Miguel, and the communication was deposited among the archives of the alcalde's office. The directions of the order were carried out by the alcalde by placing Trujillo in possession of the land, and the alcalde then reported to Secretary Miranda that the governor's order had been duly executed. Salazar went upon the spot in company with Trujillo and placed the latter in possession by pointing out and designating to him the boundaries of the tract. Trujillo went upon the land to occupy it, I think, in July, 1842. He occupied the place four years, having built upon it a small house, constructed some small tanks, and planted some ground. He was succeeded on the place by Juan Lucero, he by Jesus Casados, and he by John L. Taylor, here present."

Francisco Trujillo also testified that his father, who was Ventura Trujillo, had brought a very rich woman from the Comanches, and after that, the Mexican government made this grant to his father, and that there was an order signed by the government (governor) with a man to go and deliver the land to his father. That he knows the order was signed by

Governor Armijo, and declared (directed) Damasio Salazar to go and deliver the land. That the land was delivered in the year 1842. That he was present when it was delivered by Salazar and Rafael Aragon, his secretary, and that a communication was signed stating that it had been delivered. He also states that he heard Salazar say, in respect to the order of the governor, that the order was to deliver the land to his father, and then he says that Damasio Salazar sent a communication to General Armijo, stating that the land had been delivered. That his father and Damasio Salazar both told him that it had been sent.

Upon the other hand, however, an inspection of the document signed by Salazar shows no reference whatever to a grant made by the governor or any order made by the governor directing him to put the grantee in juridical possession, although in making the grant he purports to be acting "in conformity with the supreme decrees," which means nothing more than he is acting in conformity with the laws of the land. The grant certifies that Trujillo personally appeared before him, solicited the land as a farm for the support of a large family, and that he, the alcalde, "finding the petition to be a just one, and acting in conformity with the supreme decrees, have made him said donation in the name of God and the supreme Mexican nation, so that as a good compatriot he may make good use of it," under certain conditions, and "in order that this foregoing instrument may have the force and validity by law required, the aforesaid Trujillo has requested me to interpose my authority and judicial decree, and I, the said justice, declared that I would interpose, and did interpose, as far as I am authorized by law."

Not only is there no reference to a decree of the governor, but it is doubtful whether the instrument was intended as an absolute grant of the land or anything more than a usufruct, as the donation is made "so that as a good compatriot he may make use of it," the land being declared to be "commons and pasture grounds of the inhabitants of this precinct."

Indeed, it is doubtful whether the reference in the petition to a grant of the governor was not an afterthought, inasmuch

as in a petition made by John L. Taylor (then claimant of his tract) to the surveyor general of New Mexico, about the year 1870, the following allegation is made as to the title: "Your petitioner would further state that said grant of land was duly made according to law and the usage and customs of the laws of New Mexico on the second day of July, eighteen hundred and forty-two (1842) by one Damasio Salazar, a justice of peace in the said county of San Miguel del Bado, to one J. C. Ventura Trujillo, a resident of said county of San Miguel del Bado." No reference was made in this petition to a grant by the governor. This petition having been rejected by the surveyor general, upon the ground that an alcalde had no power to make donation of vacant public lands, Taylor, in 1873, applied for a rehearing upon the ground of the newly discovered evidence of Miranda and Aragon to the effect that the governor had made such grant. The petition was again (December 19, 1872,) denied, "the matter being now before Congress."

It further appeared and was stipulated that a certain index made by Antonio B. Vigil, completed in the year 1851, and entitled "A general index of all documents of the Government of Spain and Mexico up to the year 1846," contained no mention of any grant of the Ojo del Apache tract.

Upon the whole, we think it extremely improbable that, if a grant had been made by the governor, no reference whatever should have been made to it by the alcalde, who, upon the theory of the petitioner, was acting merely as the right hand of the governor in putting Trujillo into possession. The document is not in the usual form of a return to an order of a governor to put a grantee into juridical possession of the land, of which the reports and records of this court show many examples, but of an attempt by an alcalde to make a grant himself upon the petition of an applicant. But if the governor had already made the grant why should the alcalde undertake to make one, or state the reasons why in his opinion it should be made?

He does not pretend to be acting pursuant to a decree of the governor, and makes no mention of a delivery of juridical

possession, by going upon the premises with the petitioner, pointing out the boundaries, plucking grass, or throwing stones, taking the grantee by the hand and leading him over the lands, or of any of the formalities which, under the Spanish and Mexican customs, were observed by the officer delivering possession. The document is such an one as the governor might have been expected to execute, but by no means such as to show that the alcalde intended to deliver juridical possession. In short, he assumed to do that which he had no right to do, and carefully omitted to do that for which he had complete legal authority.

When we consider what was required to be done under the regulations for the colonization of the Territories of Mexico, made November 21, 1828, (Reynolds' Span. & Mex. Law, 141,) in pursuance of the act of the Mexican Congress of August 18, 1824, (Reynolds, 121,) and the practice of the officers in that connection, the failure to conform to the recognized methods of disposing of public lands becomes still more important. These regulations are stated in *United States* v. *Cambuston*, 20 How. 59, and *United States* v. *Bolton*, 23 How. 341, and required —

1. That the governor of the Territory should be empowered to grant vacant lands for the purposes of cultivation (Reg. No. 1, Reynolds, 141);

2. That a petition should be addressed to the governor, describing the applicant by name, country and profession, and, as distinctly as possible, the land requested (Reg. No. 2);

3. That the governor should proceed to obtain the necessary information with regard to the land and the petitioner, and whether there be any objection to making the grant (Reg. No. 3);

4. That, if the governor accede to the petition, he shall make a grant, describing the boundaries of the land, to serve as a title to the party interested, and refer it to a subordinate officer, such as an alcalde, to make delivery of juridical possession (Reg. No. 8, Hall's Mex. Law, sec. 511);

5. A return by such officer to the governor that he accompanied the petitioner to the lands and delivered possession to

him with the usual formalities observed for the investiture of title;

6. That these papers should be placed of record in the archives of the Territory, and that a copy, or *testimonio*, be delivered to the petitioner. Whether the grant of the governor required the approval of the Departmental Assembly, or Territorial Deputation, is not a question which arises in this case. Reg. 5, 6, 7, Hall's Mex. Law, sec. 580; *United States* v. *Reading*, 18 How. 1, 7; *Hornsby* v. *United States*, 10 Wall. 224; *United States* v. *Vigil*, 13 Wall. 449.

Not a single one of these formalities appears to have been observed, but we are left to infer from the testimony of two or three witnesses, who swore to their recollection of what took place thirty years before, that some of them were in fact observed. When we consider that this testimony is contradicted, or at least rendered exceedingly improbable by the only document which the petitioner is now able to produce, we must admit that oral testimony of this kind forms a very uncertain basis upon which to sustain a grant of lands. As we said with respect to a somewhat similar state of facts connected with an alleged grant of land in California, *Luco* v. *United States*, 23 How. 515, 543: "It may be received as a general rule of decision, that no grant of land purporting to have issued from the late government of California should be received as genuine by the courts of the United States, unless it be found noted in the registers, or the expediente, or some part of it be found on file among the archives, where other and genuine grants of the same year are found; and that owing to the weakness of memory with regard to the dates of grants signed by them, the testimony of the late officers of that government cannot be received to supply or contradict the public records, or establish a title of which there is no trace to be found in the public archives." In the case of *Peralta* v. *United States*, 3 Wall. 434, it was said that written documentary evidence, no matter how formal and complete, or how well supported by the testimony of witnesses, if coming from private hands, is insufficient to establish a Mexican grant if there be nothing in the public records to

show that such evidence ever existed. But it was intimated that, if the claimant can show to the satisfaction of the court that the grant had been made in conformity to law and *recorded*, and that the record has been lost or destroyed, he will then be permitted to give secondary evidence of its contents. See also *Fuentes* v. *United States*, 22 How. 443; *United States* v. *Knight's Admrs.*, 1 Black, 227; *United States* v. *Vallejo*, 1 Black, 541.

In this case, however, the same uncertainty which exists with regard to a grant having been made by the governor, necessarily attends the fact as to whether it was ever recorded, and as no *testimonio* was ever delivered to the grantee, it must be held that the existence of the grant has not been proved.

That a justice of the peace, or an alcalde, had no power to make a grant of public lands is evident from the character of his office, which appears to have been analogous to that of an ordinary justice of the peace, (Decree of July 22, 1833, Reynolds, 170, 176,) and from the failure to find any evidence in the laws of Spain or Mexico that such power existed. Indeed, such want of power is admitted by the petitioner. See *Reynolds* v. *West*, 1 California, 322; *Crespin* v. *United States*, 168 U. S. 208, 213.

2. In further support of his petition, the depositions of several witnesses were introduced in evidence tending to show that the tract in question had been occupied by the original grantee and those claiming under him ever since the date of the alleged grant, and, indeed, for some years previous thereto. Upon the other hand, oral evidence was introduced by the Government to the effect that the land in question had never been occupied by the original grantee, but that he and his family lived at the time of his death, and for many years prior thereto, several miles distant from the land in question. While Trujillo had been upon the land in 1842, he made no improvements thereon, and after remaining a few days left the premises with the remark that the document, for which he paid three dollars to Salazar, was worth more than the whole grant; also that the property at that time, and for years subsequent to the possession by the Government of the

United States, had been used as common pasturing ground for the people of the vicinity, the alleged grantee or his representatives making no claim to be the owner thereof.

That it should be used for pasturage by the neighboring inhabitants is certainly consistent with the alleged grant, which describes the lands as "commons and pasture grounds of the inhabitants of this precinct," and there is nothing upon the face of the grant indicating that this right of pasturage was intended to be taken away. The grantee was apparently to be allowed to establish a farm there for the support of his family, but there is no intimation that he was to have the power to exclude the inhabitants from their customary use of such tract as commons and pasture grounds. Indeed, giving the fullest credence to his testimony, there is little or nothing to indicate that the possession of the grantee, under the alleged grant, was characterized by the notoriety, openness and exclusive character necessary to make out a title by adverse possession.

In addition to this, however, the possession did not begin until 1842, and at the date of the treaty of Guadalupe Hidalgo, in 1848, such possession had not lasted for more than six or seven years. In other words, the claim had not become "complete and perfect at the date of the treaty, nor one that claimant would have had a lawful right to make perfect had the territory not been acquired by the United States," within the meaning of the Court of Private Land Claims act. In *Crespin* v. *United States*, 168 U. S. 208, the plaintiffs claimed under a grant alleged to have been made in 1840, by a prefect, and also by adverse possession since that time. We held, however, that the language of the act creating the Court of Private Land Claims, above quoted, "would preclude the idea that possession since the date of the treaty, however exclusive and notorious, could be regarded as an element going to make up a perfect title. There was no evidence of more than six or eight years' possession prior to the date of the treaty, and this, under any construction of the Spanish or Mexican laws, would be insufficient to constitute a title against the sovereign." See also *Bergere* v. *United States*, 168 U. S. 66, 77; *Hayes* v.

United States, 170 U. S. 637, 649, 653. In this last case it is said: "As the ordinary prescription could not apply, and as the necessary time for the extraordinary prescription under the Spanish law had not run at the time of the acquisition of the territory by the United States, and as, clearly, whatever may have been the rule as to the operation of prescription against the Spanish or Mexican Governments, it did not run after the treaty against the United States, it follows that the claim of prescription is without foundation."

It would seem to follow from the general principle of law, so often asserted, that the statute of limitations does not run against the Government, that no length of possession since the treaty of 1848 would of itself give a valid title to land. How far the long-continued possession prior to the date of the treaty would be operative against the Spanish or Mexican Governments, is a question which does not arise in this case, where the possession did not exceed six years. See *Lindsey* v. *Miller*, 6 Pet. 666; *Gibson* v. *Chouteau*, 13 Wall. 92; *Weber* v. *Harbor Commissioners*, 18 Wall. 57, 70; *Sparks* v. *Pierce*, 115 U. S. 408; *Redfield* v. *Parks*, 132 U. S. 239.

In *United States* v. *De Haro*, 22 How. 293, there was a grant made in 1843 by Governor Alvarado of California, and, with a possession of sixteen years thereafter, was held to be sufficient presumption of a legal grant, but there was no requirement as above stated with regard to the Court of Private Land Claims act. In *United States* v. *Chaves*, 159 U. S. 452, there was evidence of an original grant in 1833 by the Government of New Mexico, although the original records had been lost. The grant was proved by secondary evidence, and a possession of sixty years thereunder, and it was held that a legal grant might be presumed upon proof of adverse possession for twenty years, the court observing: "Nothing, it is true, can be claimed by prescription which owes its origin to, and can only be had by, matter of record; but lapse of time accompanied by acts done, or other circumstances, may warrant the jury in presuming a grant or title by record."

The doctrine at the foundation of that case is thus stated by Mr. Justice Story in *Ricard* v. *Williams*, 7 Wheat. 59,

109: "A grant of land may as well be presumed as a grant of a fishery, or of common, or of a way. Presumptions of this nature are adopted from the general infirmity of human nature, the difficulty of preserving muniments of title, and the public policy of supporting long and uninterrupted possessions. They are founded upon the consideration that the facts are such as could not, according to the ordinary course of human affairs, occur, unless there was a transmutation of title to, or an admission of an existing adverse title in, the party in possession. They may, therefore, be encountered and rebutted by contrary presumptions; and can never fairly arise where all the circumstances are perfectly consistent with the non-existence of a grant; *a fortiori*, they cannot arise where the claim is of such a nature as is at variance with the supposition of a grant. In general, it is the policy of courts of law to limit the presumption of grants to periods analogous to those of the statute of limitations, in cases where the statute does not apply. But where the statute applies it constitutes, ordinarily, a sufficient title or defence, independently of any presumption of a grant, and therefore it is not generally resorted to. But if the circumstances of the case justify it, a presumption of a grant may as well be made in the one case as in the other; and where the other circumstances are very cogent and full, there is no absolute bar against the presumption of a grant, within a period short of the statute of limitations."

But this presumption is subject to the limitation that where title is claimed from a deed which is shown to be void, it will not be presumed that there was an independent grant, *Smith* v. *Higbee*, 12 Vermont, 113, or where surrounding circumstances are inconsistent with the theory of a grant. *Townsend* v. *Downer*, 32 Vermont, 183.

The substance of this doctrine is that lapse of time may be treated as helping out the presumption of a grant, but where a void grant is shown, it affords no presumption that another valid grant was made. Nor does such presumption arise if the surrounding circumstances are incompatible with the existence of a grant. In the case under consideration we

cannot find any evidence which justifies us in believing that a legal grant can have been made, and under those circumstances we cannot consider possession since the date of the treaty as dispensing with the requirement that the title, if not perfect at that time, was one which the claimant would have had a lawful right to make perfect, had the territory not been acquired by the United States.

In the view we have taken of this case, it becomes unnecessary to consider whether Governor Armijo had power or authority to make a grant of public lands without the assent of the territorial deputation or departmental assembly.

The judgment of the court below must therefore be

Affirmed.